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CONFIRMATION HEARINGS ON FEDERAL APPOINTMENTS

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

CONFIRMATION HEARINGS ON APPOINTMENTS TO THE DEPARTMENT OF JUSTICE

JULY 27, 28, AUGUST 5, AND SEPTEMBER 8, 1988

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DEPARTMENT OF JUSTICE NOMINATIONS

(Keating and Dennis)

WEDNESDAY, JULY 27, 1988

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 10:05 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Howell Heflin (acting chairman) presiding.

Also present: Senators DeConcini, Thurmond, Hatch, Grassley, and Specter.

OPENING STATEMENT OF SENATOR HOWELL HEFLIN

Senator HEFLIN. This hearing will come to order.

I am pleased today to welcome Mr. Francis A. Keating and his family to today's hearing, and I would like to personally congratulate you on your nomination to be Associate Attorney General.

As Associate Attorney General, Mr. Keating would be responsible for assisting the Attorney General and the Deputy Attorney General in formulating and implementing policies and programs of the Department of Justice pertaining to civil matters and the overall management of the Department.

Mr. Keating, an examination of your record indicates that you are a man who had broad experience in our Nation's criminal justice system. You have served as an FBI agent, assistant district attorney, a U.S. attorney, and an attorney with an extensive private practice. And since 1985, you have been in charge of enforcement as Assistant Secretary at the Department of Treasury. These prior positions should serve you well in the position you have been nominated to fill.

We will listen closely to your answers to the committee questions and wish you well during the confirmation process.

We are pleased to have Senator Boren, Senator Nickles and Senator Roth here to introduce Mr. Keating. We will be delighted to hear from you, Senator Boren. I believe you are from his home State.

STATEMENT OF HON. DAVID L. BOREN, A U.S. SENATOR FROM THE STATE OF OKLAHOMA

Senator BOREN. Thank you very much, Mr. Chairman. I am very pleased to be here to join with my colleague from Oklahoma, Senator Nickles, in recommending to you in very strong fashion the confirmation of Francis A. Keating, II—we know him as Frank Keating—to be Associate Attorney General of the United States.

Formerly, before becoming Acting Associate Attorney General, Frank Keating has served as Assistant Secretary of the Treasury for Enforcement. A number of us have had the opportunity to work with him in that capacity. Many members of us on the Finance Committee have worked with him in that capacity. In that job, he coordinated Treasury-wide enforcement policy and supervised several Treasury bureaus: the U.S. Customs Service, the Secret Service, the Bureau of Alcohol, Tobacco and Firearms, the Federal Law Enforcement Training Center. He also served as U.S. co-chairman of Interpol, a function which he continues as Associate General. He supervised enforcement of U.S. embargoes and chaired the advisory committee dealing with trade and cargo solicitation issues.

Before he became Assistant Secretary of the Treasury, he was a partner with a leading law firm in Tulsa and an excellent reputation in the private practice of law. Before that, he was United States attorney from 1981 to 1983 for the Northern District of Oklahoma.

Let me say, in that capacity he earned a widely respected reputation not only in Oklahoma with the law enforcement community and the legal community in general, but he was also recognized at the Department of Justice as one of the outstanding U.S. attorneys in the United States. I had several conversations with associates, friends and colleagues at the Department of Justice during that period of time, and I know the very high regard in which he was held. In fact, he was the chairman of the Attorney General's Advisory Committee of U.S. Attorneys during that time. So he was so highly regarded by the Department, by his fellow U.S. attorneys, that he chaired the Advisory Committee of U.S. Attorneys.

During the period from 1972 to 1981, he was a member of the Oklahoma House of Representatives and later a member of the Oklahoma State Senate. And, Mr. Chairman, this leads me to the only blot on his record that I am sorry to have to report to the members of the committee: He served as a Republican member of the Oklahoma legislature.

Of course, being a Republican member and having a leadership post, he was the minority leader of the State Senate. That is the only blot on his record that I know, his otherwise good judgment, is his party affiliation.

But let me say in that regard as well, appearing here today as a Democratic Senator from Oklahoma, Frank Keating is the kind of person that has had as much respect on our side of the aisle as he had on the other. He is known as a person that is fair; he is tough when it comes to enforcing the laws, whether they are the State laws or the Federal laws. He also had a stint in the State prosecuting attorney's office right after law school. He also had experience as an agent with the Federal Bureau of Investigation and served in California for a period of time. He is a graduate from Georgetown University with a bachelor's degree there and a law degree, a J.D. degree from the University of Oklahoma College of Law in 1969.

It was my privilege to be a classmate with Frank Keating during those law school days when we were both in law school at the same time. I can tell you that his reputation for integrity, for being the kind of person that would be committed to public service in a very unselfish way, for dealing fairly with others was a reputation that was already well earned by the kind of person he was, even in our law school days.

He has a wonderful family. He comes from a family in Tulsa that has a tradition of public service, one of the most highly respected families in our State, has an outstanding wife who has contributed much to the civic life of our State in her own right, and three wonderful children, I think some of whom are here with us today.

So, Mr. Chairman, I know that this is a very, very sensitive time for the Department of Justice. We all realize we have gone through a turbulent period. Mr. Keating during most of this time has either been in private practice in Tulsa or the Department of Treasury here in Washington, rather than at the Department of Justice. But I can think of no better person to take on these kinds of very important responsibilities with the Criminal Division and many others under his supervision, if he is confirmed as Associate Attorney General, than Frank Keating.

Without regard to partisan politics, Frank Keating, I am convinced, would serve in that capacity, totally dedicated to our system of justice and to its integrity, and toward making sure that the law is fully implemented. I say this as a person that has known him and known him very, very well for 20 years, all the way back to his younger days and his college days as a law student.

I have total confidence in his character, his integrity. He is a person of exceptional ability. And given the need to fill these very important positions at the Department of Justice as soon as possible so that the work of the Department can go on in an orderly fashion, I would not only recommend his confirmation to you, but I would recommend that we try to proceed as quickly as possible so the important work of the Department can go on in hands in which we have total confidence.

I appreciate very much, Mr. Chairman and members of the committee, the opportunity to appear with my colleagues this morning and make these comments about Frank Keating.

Senator HEFLIN. Thank you, Senator Boren. You would probably agree that in the upcoming presidential election he may have an opportunity to erase that blot, would you not? [Laughter.]

We are delighted to have you here, Senator Nickles. We are going to let the Senators make their introductions, and also the introduction of Mr. Dennis, because they have many things to do, and then we will excuse you. We would be delighted if you would like to stay.

Senator Nickles, we would be glad to hear from you now.

STATEMENT OF HON. DON NICKLES, A U.S. SENATOR FROM THE STATE OF OKLAHOMA

Senator NICKLES. Mr. Chairman, thank you very much, and the other members of the committee, I thank you as well.

I have a statement that I would just ask that it be put into the record, and I would echo the comments of my friend and colleague, Senator Boren, concerning our strong endorsement of Frank Keating to be Associate Attorney General.

I personally have known Frank, as Senator Boren has, for a long time. We served in the State Senate together in the correct party. [Laughter.]

In the Oklahoma State Senate. I worked with him when he was minority leader. I have known him for some time. His background certainly gives him the experience to do an outstanding job as Associate Attorney General. He has been an FBI agent. He also served as Tulsa County prosecutor, did a good job in there as well.

I had the pleasure of recommending Frank to the President to be U.S. attorney for the Northern District of Oklahoma, where, as Senator Boren said, he really had an outstanding record. I remember talking to many of the people, both prior to his appointment and also in trying to find a successor for Frank Keating after he came to work as Assistant Secretary of the Treasury for Enforcement and Operations. And many people in the law enforcement field and also in the legal field just could not have been more complimentary of the job that he performed as U.S. attorney in the Northern District of Oklahoma, which is in Tulsa.

He did an outstanding job. He was recognized by Attorney General French Smith as the National Chairman of the Attorney Generals Advisory Committee for U.S. Attorneys, which I think is a high honor as well. He did an outstanding job there. I think he has done a very good job as Assistant Secretary for Treasury for Enforcement and Operations which has enormous responsibility. It oversees the Secret Service, the Customs Service, the Bureau of Alcohol, Tobacco and Firearms, and Federal Law Enforcement Training Center.

So his responsibilities are numerous. He has performed exceptionally well. I am confident that he will do an excellent job as well, as Associate Attorney General. I likewise would urge the committee to expedite not only this hearing but also his confirmation as soon as possible.

Thank you, Mr. Chairman.

[The prepared statement of Senator Nickles follows:]

July 27, 1988

NOMINATION OF FRANCIS A. KEATING, II, TO BE ASSOCIATE ATTORNEY GENERAL JUSTICE DEPARTMENT

Mr. Chairman:

It is my distinct pleasure to introduce to this committee my good friend, Frank Keating, who is President Reagan's nominee to be the next Associate Attorney General. I think Frank Keating will do an outstanding job, just as he has done throughout his career, most recently in serving as Assistant Secretary of the Treasury for Enforcement and Operations.

I have had the pleasure of knowing Frank Keating for some time. He and his wife, Cathy, are very good friends of mine.

I became acquainted with Frank Keating when we served together in the Oklahoma State Senate, while he was minority leader. He has also served as a Tulsa County prosecutor, a special investigator for the FBI, a representative in the state House, and U.S. attorney for Oklahoma's Northern District. In each of these positions, Frank Keating has demonstrated his leadership abilities and his impeccable ethics.

I had the high honor of recommending Frank Keating to the President to be the U.S. Attorney for the Northern District of Oklahoma. He was easily confirmed and quickly earned national recognition for his many successes. He was commended by then-Attorney General William French Smith for efficiency in his office and was appointed by the Attorney General as national chairman of the Attorney General's Advisory Committee for U.S. Attorneys.

In his recent position as Assistant Treasury Secretary, Frank oversaw the United States Secret Service, the United States Customs Service, the Bureau of Alcohol, Tobacco and Firearms, and the Federal Law Enforcement Training Center. He was also responsible for supervising the Office of Foreign Assets Control, the entity charged with the implementation and enforcement of sanctions imposed by the United States against nations, such as Cuba, Iran, South Africa, and Libya.

Perhaps most importantly during his term as Assistant Secretary, Frank Keating was active in the war against drug trafficking. In recognition of his influence in inter-agency drug-fighting initiatives, he was selected to play a major role in the President's National Drug Policy Board: he was the vice-chairman of the Enforcement Coordinating Group of this board. He was involved in border interdiction efforts and in fighting the financial war against drug trafficking.

Frank brings with him to this position at Justice a varied law enforcement, legal, and legislative background that will strengthen his already impressive qualifications and serve him well as Associate Attorney General. Mr. Chairman and members of the Judiciary Committee, I strongly recommend that this Committee approve Frank Keating's nomination and promptly forward it to the full Senate.

Senator HEFLIN. Thank you, sir.

Senator Roth, I am not sure whether you are here to introduce Mr. Keating or Mr. Dennis or both. But since you are the person who arrived earlier, I think we will allow you to go ahead now at this time.

STATEMENT OF HON. WILLIAM V. ROTH, JR., A U.S. SENATOR FROM THE STATE OF DELAWARE

Senator ROTH. Thank you, Mr. Chairman.

It is a great privilege, Mr. Chairman, to be here this morning to introduce Ed Dennis. He is an outstanding man, and I have known his family for a long time and well.

As a matter of fact, not long ago I had the opportunity of introducing Mr. Dennis at a very successful youth conference I hold annually in my State of Delaware. It was a special occasion because Mr. Dennis, who I am proud to say is a son of our great State of Delaware, attending school in Dover, had come back home to inspire future generations. And that he did.

He told those high school students that in America there is no such thing as a monopoly on greatness. Indeed, Mr. Dennis' life is an example of his words. By the time he graduated from Dover High School, he received a senatorial appointment by Hale Boggs, a former colleague of ours, to the U.S. Merchant Marine Academy. Four years later, he graduated with a degree in marine engineering and an officer's commission in the U.S. Naval Reserve.

In 1970, he entered law school at the University of Pennsylvania where he graduated to clerk for a most distinguished Federal judge named Leon Higginbotham. Following his clerkship, he was appointed as assistant U.S. attorney where a string of successes brought him to national attention.

In 1980, he was appointed chief of the Narcotic and Dangerous Drug Section for the Criminal Division of the U.S. Department of Justice. Again, his successes brought him to the attention of the President. In 1982, he was appointed U.S. attorney for the Eastern District of Pennsylvania.

Now, Mr. Chairman, he is here to take the next important step. But before I do that, I would like to introduce his family: Dr. and Mrs. Dennis have been outstanding citizens of my State of Delaware. He has been a prominent doctor. His family has been very involved in the community, and he is following in their footsteps.

But, today, Ed Dennis sits before this Judiciary Committee in nomination by our President to serve as Assistant Attorney General; that is, to head the Justice Department's entire Criminal Division, to become the number one prosecutor in America. And I would just like to tell my colleagues that I am proud of Edward Dennis. I am proud of my association with him, and I am proud of the honor he brings to our great State of Delaware. He did make one mistake; he moved to Pennsylvania. But I know he brings great honor to the Commonwealth of Pennsylvania as well, and I urge that he be recommended for confirmation.

Senator HEFLIN. Thank you.

We are delighted now to hear from Senator Heinz.

STATEMENT OF HON. JOHN HEINZ, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator HEINZ. Mr. Chairman, thank you very much. It is a pleasure to appear here with Bill Roth, my colleague and your fellow committee member, and Senator Specter, in support of Ed Dennis' nomination by the President to be head of the Criminal Division of the Justice Department.

I must say to Bill Roth that it is our view that Ed Dennis started out splendidly in Delaware and has elevated himself substantially ever since by moving to Pennsylvania. [Laughter.]

Senator HEFLIN. Are you sure he is not doing missionary work? [Laughter.]

Senator HEINZ. He is doing the Lord's work, Mr. Chairman. I might add that he started doing the Lord's work early on in Philadelphia when he was an assistant U.S. attorney there. He later became chief of the Justice Department's Narcotic and Dangerous Drug Section. Most recently, since 1983, he has been the U.S. Attorney for the Eastern District of Pennsylvania.

While he was an assistant U.S. attorney, he built an excellent record. He was directly responsible for prosecuting and obtaining convictions involving extortion, fraud, and illegal sales of weapons. He also pursued the first successful prosecution and forfeiture under RICO for record pirating. But more recently, and most significantly, as U.S. attorney for the eastern district he has instigated some very important grand jury investigations and prosecutions. Just a few highlights, Mr. Chairman, include:

Breaking a major police corruption ring in Philadelphia; the largest corruption investigation in IRS history was brought to a successful conclusion; and a number of significant convictions obtained against individuals and corporations guilty of bilking both taxpayers and the Department of Defense through widespread contract fraud.

Among his most notable achievements is one that stemmed from a 10-month investigation and resulted in five indictments to date, charging 23 individuals with racketeering characterized by extortion and violence, and widespread bribe payments to local, State and Federal officials, including 25 local sitting judges.

So when we refer to Ed Dennis as someone who will be a superb chief crime fighter and prosecutor for the Nation, we do so for two reasons: first, based on his remarkable record of accomplishment as a professional in the Justice Department; and, second, as somebody who clearly has a profound understanding, an in-depth, nose-to-nose understanding, in attacking the problems of organized crime, drugs, white collar crime, and political corruption.

Let me say, Mr. Chairman, that Senator Specter and I are very proud that our Federal Judicial Nominating Commission for the Commonwealth of Pennsylvania has recommended Ed Dennis. Moving his appointment through the political process was not easy. It was not easy because he had been in Washington, DC, as chief of the Justice Department's Narcotics and Dangerous Drug Section. There were people who felt that he had not been active enough in the local political vineyard in Philadelphia. Well, he could not be.

He was not there. He was doing both the Lord's work and the Government's work in Washington, DC.

There were some people who I suspect were jealous of him because he was a career professional. There may have been a few who simply did not want somebody that good to do the job. But Senator Specter and I persevered. Ed Dennis became the U.S. attorney. We are proud of the job he has done and prouder still that he will be the Nation's chief crime fighter and prosecutor, assuming that he is both approved by this committee and confirmed by the Senate as head of the Criminal Division.

Mr. Chairman, I ask unanimous consent that my entire remarks be placed in the record. We do have a vote on. There are a few more things I could say on Ed Dennis' behalf, except that it is a great pleasure to have the privilege of introducing him to this committee.

Senator HEFLIN. Your entire statement will be introduced into the record.

[The prepared statement of Senator Heinz follows:]

STATEMENT OF SENATOR JOHN HEINZ (R-PA)
BEFORE SENATE JUDICIARY COMMITTEE
NOMINATION OF EDWARD S.G. DENNIS, JR.
ASSISTANT ATTORNEY GENERAL FOR CRIMINAL DIVISION, U.S. DEPARTMENT OF JUSTICE
JULY 27, 1988

Mr. Chairman, it is a pleasure to join with my colleague from Pennsylvania, Senator Specter, to introduce to the Committee Edward Dennis, the President's nominee to be Assistant U.S. Attorney in charge of the Justice Department's Criminal Division. I thank you, Mr. Chairman, for holding this hearing so expeditiously.

Ed Dennis is well known to my constituents in eastern Pennsylvania. First, as an aggressive Assistant U.S. Attorney in Philadelphia, then as Chief of the Justice Department's Narcotics and Dangerous Drugs Section, and, most recently, as U.S. Attorney for the Eastern District of Pennsylvania from 1983 to the present, Ed Dennis has built an outstanding record. As an Assistant U.S. Attorney, he was directly responsible for convictions for extortion, fraud, and illegal sales of weapons, as well as the first successful prosecution and forfeiture under RICO for record pirating.

Among the cases he handled were two especially significant ones: the smashing of a huge heroin distribution ring in West Philadelphia, and conviction of Philadelphia organized crime bosses and elected officials who attempted to extort monies from a local developer in exchange for favorable action on a zoning request.

As Chief of the Justice Department's Narcotics and Dangerous Drugs Section, he earned commendations from the U.S. Customs Service and from foreign governments for his outstanding efforts in indicting and prosecuting illegal drug distribution rings at home and abroad.

Since May of 1983, Ed has served as U.S. Attorney for the Eastern District of Pennsylvania. His nomination was recommended by Senator Specter and me and by our merit selection panel, and his performance has more than justified our confidence in him. He and his staff brought the full weight of federal law enforcement to bear on public corruption, racketeering, illegal drug sales and distribution.

Through the work of grand jury investigations and prosecutions he instigated, a police corruption ring was broken, the largest corruption investigation in IRS history was brought to a successful conclusion, and a number of significant convictions were achieved against individuals and corporations guilty of bilking the taxpayers and the Department of Defense through widespread contract fraud.

Perhaps Ed Dennis' most notable achievements as U.S. Attorney have stemmed from a ten month investigation that resulted in five indictments to date, charging 23 individuals with racketeering characterized by extortion and violence, and widespread bribe payments to local, state, and federal officials, including twenty-five sitting local judges.

Ed Dennis began his undergraduate work at Penn State and completed it at the U.S. Merchant Marine Academy. He earned his law degree at the University of Pennsylvania. Throughout his working and personal life, he has demonstrated an extraordinary commitment to public service and justice for all.

In addition to all of his good works as a federal prosecutor, he has been recognized repeatedly as an articulate spokesman and leader in local civil rights and crime prevention efforts. When it became apparent that local drug enforcement efforts were failing to halt daytime drug sales in some Philadelphia residential neighborhoods, he spearheaded the formation of the Neighborhood Drug Dealers Project, an ongoing coordinated state and federal effort. This project has not only resulted in the arrest of nearly 100 street dealers through cooperation among local, state, and federal law enforcement agencies but an extraordinary effort to educate residents and get them involved in turning back the tide of illegal drug trafficking in their neighborhoods.

Mr. Chairman, Ed Dennis is a man of unquestioned integrity and exceptional skill. At this critical juncture, with the need to pursue with the utmost dispatch and vigor the Pentagon scandal, the cancer of drug distribution and drug-related crimes, and public corruption of all kinds, Ed Dennis is the right person for the job.

He is an able and experienced adminstrator; he is widely respected in the Justice Department and my constituents in Eastern Pennsylvania; but more than that, he has spent all of his professional life making his community, my state, and our nation a better, safer, and more just place for all of our citizens.

I commend the President for having nominated Ed Dennis for this critically important position, and I urge the Committee to act expeditiously on his confirmation as Assistant Attorney General. positionresponsibilities for which the President has nominated him, and I urge the Committee to act expeditiously on the confirmation of Jan DuBois' nomination to the U.S. District Court for the Eastern District of Pennsylvania.

Senator HEFLIN. Senator Specter, do you wish to introduce Mr. Dennis now or after we return from the vote?

STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator SPECTER. I shall be pleased to do it now. I shall be relatively brief since we are about 5 minutes into the 15-minute roll call vote.

I am delighted to join my colleague, Senator Heinz, and also Senator Roth in introducing and supporting the nomination of Ed Dennis for Assistant Attorney General for the Criminal Division. No one has noted that Mr. Dennis was born in Maryland, so perhaps the most remarkable part of the proceedings to date is that no Senator from Maryland has appeared to take part of the credit for Mr. Dennis' nomination.

Shortly after I was elected to the U.S. Senate, I conferred with my colleague, Senator Heinz and decided that there ought to be a black U.S. attorney in the Eastern District of Pennsylvania for many, many reasons, which I shall not elaborate upon now. One of the first appointments that I made early on was to talk to Mr. Dennis whom I had known casually and got to know a great deal better. Senator Heinz has scratched the surface which perhaps could be discussed in some detail about the difficulties of Mr. Dennis' nomination for many, many reasons.

Ed Dennis has an outstanding record, both before coming to the U.S. Attorney's Office, in law enforcement, educationally, and while in office. Shortly after his name was submitted to the President, I sat down with Mr. Dennis and discussed his role as Assistant Attorney General and to give my urging that he act in the position until these confirmation hearings could be held.

Like Senator Heinz, there is a great deal more that I could say, but we have 6 minutes left and just enough time to make the vote. So I thank you, Mr. Chairman.

Senator HEFLIN. Thank you, Senator Specter. We would be delighted for you to stay with us if you would like. If not, we will understand.

We will stand in recess until we return from the vote to which we are going.

[Recess.]

Senator HEFLIN. I made an opening statement concerning Mr. Keating. I will proceed now, since the introductions have been made, and make an opening statement pertaining to Mr. Dennis.

I would first like to welcome Mr. Dennis and his family to today's hearing. Mr. Dennis, I would like to first congratulate you on your nomination to become Assistant Attorney General in charge of the Criminal Division at the Department of Justice. Aside from the office of Attorney General itself, there is no more important position in the Department of Justice than the position of Associate Attorney General in charge of the Criminal Division.

The head of the Justice Department's Criminal Division is not only in charge of formulating criminal law policies for our Nation, but it serves as the primary enforcer of our Nation's criminal law. Further, the head of the Criminal Division is in charge of a number of the most important divisions at the Department of Justice, including the Organized Crime and Racketeering Section, the Narcotics and Dangerous Drug Section, and the Public Integrity Section.

Mr. Dennis, from your record, you appear to be extremely well qualified to head the Criminal Division. You served as a law clerk to a Federal judge. You were an assistant U.S. attorney. You headed the Narcotics Section of the Criminal Division, and most recently you have served as a U.S. attorney for the Eastern District of Pennsylvania.

While your term of office will perhaps be short, unless you are continued in the next administration, I feel that you do have a task before you. It is extremely important that the Associate Attorney General in charge of the Criminal Division develop strategies and plans in regards to the war on drugs and in regards to the Public Integrity Section work.

We look forward to hearing your answers to the committee questions and wish you well in the confirmation process.

Senator Hatch, do you have an opening statement?

Senator HATCH. Only a few comments, Mr. Chairman. Thank you. I want to thank you this morning for holding these confirmation hearings. We appreciate having both of these gentlemen appear before the committee, and I hope we can move with as much dispatch as possible so that the Department of Justice will have these two very important positions filled.

Both of these positions, Associate Attorney General and Assistant Attorney General for the Criminal Division, I think are critical to the effective operation of the Department of Justice. So filling these vacancies with these two well-qualified individuals I think will go a long way toward benefiting our whole country.

I am grateful to you, Mr. Chairman, for holding this hearing, and I am interested in what these gentlemen have to say and want to proceed with as much dispatch as we can.

I commend both of you and welcome both of you to the committee, with your families, and I just hope this will be a pleasant experience for you.

Senator HEFLIN. Senator Grassley, do you have an opening statement?

Senator GRASSLEY. Yes, I do. A short one.

Mr. Chairman, I too want to take an opportunity to thank the Keatings and Dennises for being here, and we want to welcome them.

Yesterday, Mr. Chairman, we had an opportunity to hear a great deal about the deep malaise that has apparently infected the U.S. Justice Department during the last several years. We heard about Department employees being embarrassed and ridiculed, about deteriorating morale, a paralysis of performance, and an erosion in public confidence in the Department. We heard that this malaise was the direct result of the problems of the incumbent Attorney General.

Today, we are to hear from two nominees for senior positions in the Justice Department. One nominee, Mr. Keating, has been carrying out his duties as the third-ranking official of the Department since approximately the latter half of April. The other nominee, Mr. Dennis, has been carrying out his duties as head of the Criminal Division since about the beginning of June.

So, today, along with the other information that we should ask these nominees, I hope that the committee will be equally interested in the experiences of these nominees to the Department of Justice over the last several weeks. We should want to know how these nominees view the present morale and performance of the Justice Department, how they view their relationship with the senior officials and career civil servants at Main Justice, and maybe most importantly, their relationship with the Department's line attorneys and the U.S. attorneys out in the field.

We ought to have their point of view on this, because it is as important to this committee, in its oversight function, as are the points of view we heard from people who have left the Department. I look forward to their testimony, Mr. Chairman.

Senator HEFLIN. Senator Specter, do you have an opening statement?

Senator SPECTER. Yes. Thank you, Mr. Chairman.

I believe these confirmation hearings are very important because they are tremendously important jobs, the Associate Attorney General and the Assistant Attorney General for the Criminal Division. Yesterday, we had an oversight hearing because of the unusual departures of the Deputy Attorney General and the Assistant Attorney General in charge of the Criminal Division. As I said yesterday, I think that the Judiciary Committee does not do nearly enough by way of oversight.

We have occasion when nominees are before the committee to articulate the priorities which we Senators see, and then too often we do not have an opportunity to really get to the heart of many matters which are of major concern to us. There was one specific instance that has concerned this Senator for some time, and that has been the designation back in fiscal year 1986 about a special task force on drugs for the city of Philadelphia.

It was apparent to me that there was an enormous problem brewing in the city of Philadelphia, and the drug problem which has plagued so many cities in America is perhaps somewhat more acute in the city of Philadelphia. It was with that issue in mind that the Appropriations Committee designated the special task force with extra personnel in the U.S. Attorney's Office and DEA and Immigration and Naturalization and Alcohol, Tobacco and Firearms. Notwithstanding that direction, the Department of Justice chose not to follow that congressional direction.

There have been numerous conversations between my office and the Department of Justice really all for naught. This is a recurrent problem which the Congress has where there are congressional priorities established which are not followed by the executive branch. A hearing like today gives us an opportunity to deal with these kinds of issues.

I have discussed the matters with both Mr. Keating and Mr. Dennis. Both have been forthcoming and cooperative. I raised these issues yesterday with former Deputy Attorney General Arnold Burns and former Assistant Attorney General in charge of the Criminal Division, William Weld. The kind of a proceeding we have today gives us an opportunity to get into these issues of congressional priorities and really at the front end, so to speak, of oversight.

There are many strong feelings by Senators and by House members on the way the executive branch functions, and especially the Department of Justice. My colleagues on this committee have expressed themselves in some depth and in some detail, and these are some of the issues which I intend to pursue during the matter here today, set the standards as to at least what this Senator thinks ought to be done.

Thank you, Mr. Chairman.

Senator HEFLIN. Thank you.

Mr. Keating, if you will come forward, if you will raise your right hand, I will administer the oath.

Do you solemnly swear that the testimony that you give before this hearing will be the truth, the whole truth and nothing but the truth, so help you God?

Mr. KEATING. I do.

TESTIMONY OF FRANCIS A. KEATING II, ACTING DEPUTY ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE

Senator HEFLIN. Mr. Keating, as you take a seat, are there some members of your family or friends that you would like to introduce? We would be delighted for you to do so at this time.

Mr. KEATING. Mr. Chairman, I have a sprinkling of both. My wife, Cathy, is with me today, as well as one of our three children; the other two are at summer camp. Our son Chip, who is eight, is here as well as Barb and Bill Robey from Oklahoma City who are friends staying with us for a few days.

Senator HEFLIN. Maybe they would like to come up and let the Associated Press take a picture of that young fellow there. He looks like he would be a good addition to have in a picture that goes back to the home town paper.

Mr. KEATING. I certainly would hope, Mr. Chairman.

Senator HEFLIN. Let them come up then. Let them take your picture. Have you got a badge in your pocket, Chip, or something? [Laughter.]

Show them your badge. He has a badge, as I understand it. What does that badge say? That is right. Show them.

All right. Well, thank you.

Mr. KEATING. Thank you, Mr. Chairman.

Senator HEFLIN. Are there some friends or other people that you would like to introduce? Are there others that you have here?

Mr. KEATING. Well, I mentioned, Mr. Chairman, I also have some friends from Oklahoma City, Barbara and Bill Robey, who are staying with us for a few days, and they are in the audience.

Senator HEFLIN. Fine. We are delighted to have you here.

Mr. Keating, if you are confirmed, will you agree to make yourself available to testify before this committee if the committee believes it is important to hear from you?

Mr. KEATING. Yes, I will, Mr. Chairman.

Senator HEFLIN. It is my understanding that you have been intimately involved in the Government's attempt to interdict illegal drugs flowing across our borders. Do you have any ideas that you would share with the committee on the ways in which we can improve our interdiction efforts?

Mr. **Keating**. Mr. Chairman, as the committee is certainly aware, the National Drug Policy Board, chaired by the Attorney General, is in charge of that effort. I happen to chair one of the two sub-groups under the National Drug Policy Board, the Enforcement Coordinating Group which consists of all of the agency heads representing the law enforcement community that have responsibilities in this area.

In the course of the last number of months, we have published and are in the process of implementing a lead agency strategy, the five lead agency strategies which have been made available to the Congress in the areas of prosecutions, interdiction, international investigations, et cetera. These lead agency strategies can be implemented and will be implemented first and foremost if the President's request for fiscal year 1989 budget requests are met. If those requests are not met, we are very concerned at the diminution of the effort of the Drug Enforcement Administration, among others, because we will see significant cuts in the U.S. Attorney's Offices as well as the DEA and FBI components.

If I were to say what we would ask of the Congress, obviously we hope that this package, the omnibus package that appears to be winding its way through the Congress, will consist of the adoption of a number of the initiatives requested by the President. And we have, Mr. Chairman, in the recent past provided our legislative proposals—or I should say our concept package to both Democrat and Republican staffers of the Senate, which reflect our recommendations to be included in that package.

Some of those recommendations include substantive criminal law changes. Others include requests for additional resources. We think it is important to note the need to fully integrate our international and our interdiction program. We believe we need to provide economic assistance, eradication assistance, even military assistance for the purpose of letting police agencies in countries such as Peru and Bolivia have access to small arms to assist them in assisting us in interdicting and eradicating drugs.

We also hope to be able to implement our defense in-depth, which is a concept which will permit us to identify ships and aircraft taking off from drug-producing countries an actually track and intercept and apprehend the violators before they are able to spill their poison into the United States.

We have been very successful thus far this year, more so than last year, significantly more so than last year. Some 65,000 pounds of cocaine, for example, had been seized by U.S. Customs up until the end of May. But we do need the assistance of the military. I understand there are significant legislative initiatives which are contemplated to bring the military into this effort in a legitimate and also in a real way, and we welcome those initiatives.

We also wish the continued support of the Congress to finish our command and control and communications systems in the Southeast and Southwest, as well as the completion of our aerostat balloon network along the Southwest border. We expect that when those things are done, and when the Congress continues to provide us the funding to do, we will be able to have a marked impact on the interdiction capabilities of this Government and, as a result, be able to keep from the public this poison, which regrettably is being eagerly sought by some 26 million Americans every month.

Senator **Heflin**. We have had testimony from various parties, including some local law enforcement officers. One of them, a sheriff from my home State, listed in regards to the flow of drugs coming into this country that primarily there were two things that should be vigorously approached. One, is our relationships with those nations from which those drugs come, and the second, which you mentioned, is the identification offshore from those countries which identify planes, small ships that are coming into it. He used as an analogy a funnel, a reverse funnel, where the small end is from the countries where the drugs are coming, and then as the funnel goes it spreads out. The difficulty of trying to police and guard shorelines and borders of several thousands of miles as opposed to the location of a few countries from which these drugs are coming and attempt to identify the ships, the planes that come in.

It seems to me that his testimony made sense. His testimony was made available to the Armed Services Committee, and we hope that there will be a genuine effort on the part of the military to use that sophisticated radar or electronic surveillance mechanisms and machinery and other types of activities that they have to help identify in this.

I hope as you are involved in this that you will endeavor to try to work with those ideas of which you have mentioned, and some which I have mentioned, to try to stop the flow of illegal drugs coming into this country. I think it is obvious why we cannot guard and patrol every line or border considering the thousands of planes that are coming in and out of airports, and numerous small ships. So I hope that this can be worked on. It makes sense to me, and I just urge you to try to endeavor to do that.

There are many other problems involving drugs, and I think that we have got to focus on education and prevention programs and rehabilitation programs as well. Do you see a role that the Department of Justice can play relative to these other areas, rehabilitation, education and prevention programs?

Mr. **Keating**. Let me preface my answer, Mr. Chairman, by saying that certainly the demand side of the equation is the one that must be emphasized if we are going to have any success in this effort. All of the law enforcement in the world, all of the military in the world will not be successful in stemming the flow of drugs if, as I have indicated, some 26 million Americans want to use illicit narcotics on a monthly basis.

For example, Bolivia, one of the three major processing countries of South America, is a country the size of California and Texas combined, with a population of some 6 million people, and with a gross export product of some 60 percent of the U.S. Customs budget. It is very difficult for us to expect that poor country, one of the poorest in South America, to do all of our war-making for us. That is the reason I mentioned the need for economic assistance, eradication assistance, and military assistance to that country.

But we are going to have to make the use of narcotics painful for the American public in order to shut down that incredible flow from South America. Because the peasants there think that there is a limitless appetite for drugs in this country, and, therefore, they are growing as much as they can. They are scalping the tops of those Amazon rain forests and mountains and destroying the habitat and polluting the rivers in order to provide us our narcotics. So we have to emphasize demand reduction in the United States.

The Department of Justice and one of the components that reports to me, in addition to the Criminal Division and the others that I have mentioned and were mentioned in my introduction, is the Office of Justice Programs which includes the components which provide through the Congress grant moneys to the States. And we are examining that whole area now with the Congress and with members from your staffs and others to provide meaningful assistance in the demand reduction area in the budget years this year and following.

Senator HEFLIN. We have had testimony also to the effect that, from the viewpoint of our policies with foreign countries, we have been successful in certain areas. One country being pointed to was Turkey relative to the substantial decrease in the flow of heroin coming from that country.

Do you see a role that you can play relative to our State Department and other agencies of Government in trying to bring pressure, use persuasion or some other means to other countries where they are being produced since it is for their benefit as well as for the benefit of the world that the flow of drugs out of those countries stop?

Mr. KEATING. Mr. Chairman, I think that countries such as Bolivia that did a lot to try and stem the flow of narcotics, that then did less than they were doing previously, found themselves overwhelmed by the narcotics traffickers, the money-launderers, the narcotics thugs who were strong enough, after the Government looked the other way too long, to threaten their democracy. As you know, in Colombia, recently the Attorney General was murdered; numerous members of the Colombian Supreme Court, judges and other high officials have been terrorized out of office or killed.

That is an example of what can happen to a country that does not vigorously get involved in assisting us and other civilized countries of the world in stopping the production and manufacture and distribution of narcotics. Unfortunately, up until recently, many of those countries thought narcotics consumption was our problem. But as the Thais said in the last 2 years, recently they have made a statement that we have learned that when a polluted river flows through your farm, eventually it will pollute the banks on both sides. And that is exactly what has happened to these countries. They have serious abuse problems in their own countries, and they are highly destabilized because of narco-terrorism.

So I think that and that alone should be convincing proof to these governments to get involved in this effort. Otherwise, they may find themselves jeopardized as nations.

Senator HEFLIN. You represent the Department of Justice on the Drug Policy Board. Does the board function to try to get different areas of the Government to work together?

Mr. KEATING. Yes, it does.

Senator HEFLIN. What can we do to get better interagency cooperation in our fight against illegal drugs?

Mr. **Keating**. Mr. Chairman, I know it is not high fashion to say this, but I think that we are working better together than we ever have. Obviously, you are going to have turf disputes because the U.S. Customs Service, for example, is very proud of its record; the Coast Guard is proud of its record; and sometimes that pride results in competition, sometimes healthy, sometimes not. But the Drug Policy Board has resolved numerous interagency disputes during the course of the 2½ years that I have been involved, earlier as Assistant Secretary of the Treasury.

For example, the location of the command and control and communications facilities, the division of jurisdiction between Customs and Coast Guard, who will have authority on the high seas, what the Coast Guard will do on the high seas, what Customs will do on the high seas, the situation in the Bahamas and the relationship between Customs, DEA and Coast Guard and the Bahamas, the role of the military—all of these are examples of issues which were debated, discussed and resolved by the Drug Policy Board. I could mention many more, and I think the board is functioning. And I would hope that the Congress in its wisdom would not, in this omnibus bill, abolish that structure. I think whether there is a Dukakis Presidency or a Bush President, there is going to be a need for some kind of organization at the senior levels of this Government to make people work together. And that is what the Drug Policy Board is doing today.

Senator **Heflin**. On another issue, the issue of public integrity in the Department of Justice, which, you obviously know from being there, reading the newspapers, and viewing video testimony in the last few hours. The morale of the Department of Justice is at a low ebb.

What do you see that you can do to improve the morale of the career personnel within the Department of Justice?

Mr. **Keating**. Well, I hope this does not appear like a self-serving statement, but I think one of the first priorities is to get all these temporary people confirmed. We have an Acting Deputy Attorney General, an Acting Associate Attorney General, an Acting Assistant Attorney General for Legislative Affairs, an Acting Assistant Attorney General for Legal Policy.

That is difficult to function when you do not have permanent fixtures in place. So I would hope the first thing we could do is get a class of professionals confirmed, and I think the gentlemen who have been presented to you—perhaps I do not want to include myself in that list, but I want to say that they are friends of mine and high quality career professionals. And I would hope that they would be confirmed.

I think that the Department has a tremendous responsibility to this Nation and to the people. It has a tremendous group of career professionals who deserve leadership and support. And I know if the Senate is kind enough to confirm me, I intend to provide that kind of support and leadership to the Department.

Senator **Heflin**. Well, assuming that they are confirmed—and the fact that we are moving forward this hearing, and we will move forward with other hearings, that would do it—what do you envision that you can do to try to improve the morale and the public perception of the integrity of the Department of Justice?

Mr. Keating. Well, when I first came to the Department, as you noted, Mr. Chairman, in late April from the Treasury Department, I was under the impression that there was a black hole over there; that the morale was shattered, and that from the leadership standpoint there was not anything there. I found that that was not the case.

I think the morale is not on the floor. I think the career professionals are functioning. In the few months that I have been there as acting, I have attempted to resolve the unresolved issues that were under my jurisdiction because of the absence of Steve Trott, who was the Associate Attorney General who became a ninth circuit judge. So I do not think the morale is something that is as serious a problem as was portrayed by Mr. Burns and Mr. Weld. At least today. I do not know what occurred prior to the first of May because I was not there much prior to the first of May.

But I think that once we get these permanent positions filled, we can continue with the agenda of the Department. And I have under my jurisdiction numerous responsibilities to complete—the defense procurement fraud case, the Drug Policy Board initiatives, this legislative package which obviously is very important to us. And we need to finish those agendas. And I think that with Ed Dennis in charge of the Criminal Division, Hal Christensen, his deputy, and myself as associate, hopefully we will be able to provide the leadership to finish that agenda.

Truthfully, at this time, at this sitting, I think the Department is functioning well, and we look forward to serving under Attorney General Thornburgh if the Senate confirms him.

Senator Heflin. Well, after the testimony yesterday, do you feel that there is a need for you to take some action relative to your supervision as it would apply to the personnel under you to give them assurances that during your administration you will be expecting conduct of them that is appropriate of all Government officials, basically honesty? Do you feel that there is a need for you to meet with your people and to, in effect, demand a high standard of conduct, and at the same time to assure them of support that you would give?

Mr. Keating. Yes, sir. I have already done that.

Senator Heflin. Well, really, you have been there, and you operate that sort of a thing regardless of confirmation or not. It would appear to me to be under the present circumstances that any person in an official high position should endeavor to try to remove any clouds, whether the clouds have rain in them or not. We have clouds there, and the removal of those clouds, I think, is essential.

Now, it is my understanding that as a U.S. attorney you put some emphasis on collecting debts owed to the Federal Government based on your background while a U.S. attorney. Do you believe that the Department of Justice can do a better job in collecting overdue Federal debts?

Mr. Keating. Well, sir, when I became U.S. attorney, one of the priorities of then Attorney General William French Smith and the President was to collect moneys owed the United States. In my district, after a short while as a result of automating that process, creating I think a very organized shock corps of civil lawyers, we were able to lead the country, even in a very small district, for a number of months in terms of per capita collections.

The Attorney General asked me to chair that effort for all the U.S. attorneys, and I recommended numerous improvements to a number of U.S. attorney's offices in the country. At that time, some of them did not even have data processing equipment, did not have sophisticated word processing equipment. Now that has been fixed.

I attempted to install in many U.S. attorney's offices modern, up-to-date legal management techniques. I think the Department has been very successful in that effort, but I think we need to be even more successful. And I have talked to John Bolton, who is the Assistant Attorney General in charge of the Civil Division, with a view toward seeing if we cannot put that once again as a top priority matter. Because, again, money that is owed the United States ought to be paid back. It was not a gratuity; it was not a gift. It was a loan, and it should be returned. That is something that I think the Department needs to continue as a high priority.

Senator Heflin. Do you feel that new laws are needed to assist U.S. attorneys and other personnel in the Department of Justice in regards to debt collection at the Federal level?

Mr. Keating. Well, I understand there is a proposal before the Congress which will seek to streamline some of the Federal Rules of Civil Procedure to assist in the debt collection area. I would certainly urge the adoption of that package.

Right now, I think what we need, of course, is to make sure that the budget request of the President is honored so we can have on board the number of U.S. attorneys we need, not only to do the civil work but the criminal work, the very desperately important criminal work in those offices.

Senator Heflin. Do you have any priorities of your own which you would like to try to implement if you are confirmed?

Mr. Keating. Well, sir, I would hope, if I am confirmed, that I could continue to work with the Senate and the House in the adoption of an omnibus bill which would be a benefit to the public, which would incorporate in it the concept recommendations that the President has presented to the Hill. I would also hope we could successfully complete this very important defense procurement fraud investigation and follow those prosecutions, if warranted, to their successful conclusion, as well as to continue our efforts to defeat and destroy organized crime in the United States.

My first priority in my office at the present time is in the narcotics area because I think it is America's number one social problem. And that is what I intend to, if confirmed, devote the remaining months of the administration to.

Senator Heflin. Senator Thurmond, do you have an opening statement?

Senator Thurmond. I have no opening statement, Mr. Chairman. I just have a few questions. I will try to ask them very quickly.

Senator Heflin. All right.

Senator Thurmond. Mr. Keating, I congratulate you upon your appointment as Associate Attorney General. You certainly have had a lot of experience and are uniquely qualified for it. I know that you have served as an FBI agent, assistant district attorney, a district attorney. You have practiced law; you have been an Oklahoma State Senator, served as Assistant Secretary of the Treasury, and now you are Acting Assistant Associate Attorney General. So you certainly have the qualifications to do a fine job.

I just have a few questions here. Mr. Keating, you have been Acting Associate Attorney General now I believe since May. Would you tell the committee if you have any major areas of concern that you feel deserve a priority or do you feel that you are just carrying on in the wake of what has been started by others?

Mr. KEATING. Well, sir, I think that we have, as I indicated to the chairman, a number of things that we need to complete before the end of the term. And I would like the opportunity to complete those things, specifically in the area of narcotics enforcement, defense procurement fraud, organized crime, et cetera. I have reorganized my office on a temporary basis at the Department subject to your confirmation. I would hope to see a comprehensive drug bill passed which incorporates many of the suggestions which the administration has brought to the Hill during the course of the last several weeks; namely, habeas corpus reform, some forfeiture law reform, immigration reform, death penalty for narcotics traffickers where death ensues—things of that nature that are represented in this omnibus package.

Those are all tremendously important. We do not have very many months left, but hopefully, if confirmed, I can complete some of those agendas.

Senator THURMOND. Now you, I believe, are the third man in the Justice Department, are you not?

Mr. KEATING. Yes, sir.

Senator THURMOND. Attorney General, Deputy Attorney General, and Associate Attorney General.

Mr. KEATING. That is correct.

Senator THURMOND. Now, how would the functions be delineated between you and the Deputy Attorney General?

Mr. KEATING. Mr. Chairman, when I came aboard, the Attorney General reorganized the responsibilities of the Deputy Attorney General and the Associate Attorney General to give me as my portfolio the criminal side of the Department, to provide, as was the case under my predecessor, supervisory responsibility for the Marshals Service, the Bureau of Prisons, the Parole Attorney, the Pardon Attorney, the Criminal Division, but also to add, in addition to that, all the U.S. attorneys as well as the Immigration Service and the Border Patrol.

Mr. Christensen is my immediate superior, but his area is the civil side of the Department. Mine is the criminal side. And we have a superb working relationship. He is a top-fiight professional, and we work extremely well together. And I expect we will continue to if he and I are both confirmed.

Senator THURMOND. I had a question on drugs, but I think you have already covered that. So that is all the questions I have, Mr. Chairman. I wish you well, Mr. Keating. I hope you will be confirmed promptly, and I know you will do a fine job.

Mr. KEATING. Thank you, sir.

Senator HEFLIN. Senator Hatch, do you want to start with your questions or would you prefer to wait until we come back?

Senator **Hatch**. I appreciate that, Mr. Chairman. Why don't I just see if I can conclude? Maybe I can. All I need to ask are just a few questions. I am very pleased with Mr. Keating's and Mr. Dennis' nominations and will be fully supportive of both of you, in committee and on the floor.

Let me just ask you this: You have been there since May, right?

Mr. **Keating**. That is correct.

Senator **Hatch**. Do you see any demoralization of that Department? Did you see it when you arrived?

Mr. **Keating**. This is what I attempted in answer to Senator Heflin. I expected to see a black hole over there when I arrived——

Senator **Hatch**. Not that. It was not there.

Mr. **Keating**. I have not seen it.

Senator **Hatch**. There was not a black hole?

Mr. **Keating**. No. That is correct.

Senator **Hatch**. People were working.

Mr. **Keating**. That is correct.

Senator **Hatch**. They were getting their jobs done.

Mr. **Keating**. That is correct.

Senator **Hatch**. The criminal process was proceeding with dispatch.

Mr. **Keating**. That is correct.

Senator **Hatch**. Since you have been there, have you ever seen an instance where Mr. Meese has acted improperly or attempted to impose his will or his views upon the Acting or existing Assistant Attorney General in charge of the Criminal Division?

Mr. **Keating**. Senator Hatch, since I have been there, all of my associations, professional associations with the Attorney General have been correct and proper.

Senator **Hatch**. That has been my experience with that Department, with him and with everybody who has worked down there, including—I wish I could have been back to ask Mr. Weld some of these questions yesterday, but I just could not get back. But the fact of the matter is that I think we have two people who have left that have to justify their having left and tried to do so by talking about a malaise down there, which really has not existed.

There is no question that there is some difficulty because of the lack of confirmation of many of these positions. There is no question there is some difficulty with regard to the slow-down on some of the judges that have been nominated. There is no question that there are undoubtedly things that cause people to be concerned. But the Department is operating efficiently and well, as far as I understand it.

Mr. **Keating**. Well, Senator Hatch, I of course cannot speak to events prior to the first of May.

Senator **Hatch**. No.

Mr. **Keating**. The time frame that I came aboard.

Senator **Hatch**. From May on it seemed to me to be some of the most crucial times and very difficult times. So I will end with this.

Mr. **Keating**. But I would say that I know Mr. Burns and I know Mr. Weld, and I regard them as professionals and persons of integrity and decency. But I only can speak to my own experience there at the Department since I have been there during the course of the last several months.

Senator HATCH. And you do not confirm what they have been saying?

Mr. KEATING. Pardon me, sir?

Senator HATCH. You do not find any confirmation to what they have been saying?

Mr. KEATING. I did not see the hearing.

Senator HATCH. Since that time, since May.

Mr. KEATING. That is correct. I did not see yesterday's hearing, but since May I have not seen any significant morale problem at the Department.

Senator HATCH. Neither have I.

Mr. KEATING. Yes, sir.

Senator HATCH. Thank you.

Senator HEFLIN. There will be written questions submitted to you, and we would appreciate a prompt response to them.

When we return, we will start the hearing with Mr. Dennis.

Mr. KEATING. Thank you, Mr. Chairman.

[Recess.]

Senator SPECTER [presiding]. The hearing will reconvene, please. Senator Heflin has authorized me to resume the hearing while he goes to vote. As I indicated in my opening statement, Mr. Keating, I am a little at a loss about any confusion because I said that there were questions which I had to ask of you. I am glad I was able to catch you in the hall so that we can proceed at this time.

Mr. Keating, first, let me thank you for your cooperation on the contacts we have had in the past, both in your current position, and in the Treasury Department.

I have had a continuing interest in matters at Treasury on quite a number of grounds, and I recognize the outstanding job that you have done as U.S. attorney in Oklahoma, and also in the Treasury Department, and also the work that you and I have done together since you have been Acting Associate Attorney General.

The specific questions that I have for you relate to the conversations that we have had in the past about the special task force for the City of Philadelphia, and the requirements and directions set forth in the fiscal year 1986 Appropriations Bill, where there was the direction by the Congress, as reflected in the Senate Appropriations Bill, the committee report, concerning an interagency drug task force demonstration program, where the language of direction was used on the establishment of additional positions, on U.S. attorneys' positions, four positions for DEA, Drug Enforcement Administration positions, four positions for FBI agents, four positions for Alcohol, Tobacco and Firearms, because the Treasury Department had jurisdiction on armed career criminals where there was legislation which I wrote in 1984 and offered amendments to in 1986 to include drug dealers.

So that when there were three prior felonies, and someone was found in possession of a firearm, there would be a mandatory sentence of 15 years to life.

The first question I have for you, Mr. Keating, is what your response would be as a confirmed Associate Attorney General, on the relations with the Congress where there is such a direction for the establishment of a special drug task force. Would you implement the congressional direction?

Mr. KEATING. Well, Senator Specter, let me respond in several ways. First, I was not aware of that legislative language until our meeting of yesterday, and I had not had an opportunity to review it, or review its implementation or lack thereof.

Secondly, I was under the impression that that language was not mandatory but discretionary only.

Thirdly, as a result of my review of that statute, or that committee report, and the request of the Congress that this action be taken, I assure you that we will give that matter--Mr. Dennis and I, as you know, have discussed it with you recently—we will give that the highest priority, to examine the needs in Philadelphia, and to examine what our response should be, and to implement an effective response.

I am not in a position, at this time, to suggest to you specifically, point by point, what we will do. Only in the general nature of the response that I believe was provided yesterday, namely, the creation within the U.S. Attorney's Office of a special response to this problem—the assignment from the Lands and Natural Resources Division of attorneys that are specially qualified in the seizure and forfeiture area to assist the U.S. attorney in the forfeiture of real estate, for example, crack houses, and, to suggest a redeployment of assets if those assets are required.

But I cannot give you a firm response as to what we should or we will do because I have not had an opportunity to work with Mr. Dennis to develop it.

Senator SPECTER. Well, I appreciate the conversations we have had in the past and the meetings we had earlier this week, on Monday with you and others, and I will come to that in a minute, but I want to touch upon a more fundamental point.

When you talk about what is mandatory, you're in an area, really, of comity. The language, for example, of the Appropriations Committee report, at page 35—the Department of Commerce, Justice, and State, Judiciary and related agencies, Appropriation Bill, 1987—page 35 contains this language:

> The committee directs the Federal Bureau of Investigation to assign four special agents to a Philadelphia demonstration effort to focus on narcotics investigations.
>
> The committee's recommendation to the FBI includes an enhancement for the FBI's organized crime enforcement program, and the committee expects that these new agents in Philadelphia will be absorbed within this increase.

All right. You have an extra appropriation, you have language that the committee directs. That is the same language that appears as to U.S. attorneys and Department Drug Enforcement agents.

Now we cannot go to court, nor would we if we could, and mandamus the Department of Justice to do this. But here you have the Congress of the United States, admittedly on the initiative of one Senator, a Senator on the Appropriations Committee and on the Judiciary Committee who understands the problems and sees the problems coming—and believe me they are present in Philadelphia today. The city is bleeding on the drug problems with a tremendous increase in gang-related deaths, Jamaican Posse, and the works.

Los Angeles has had the problem. There was a congressional determination that there ought to be this kind of a demonstration project in Philadelphia.

Now the question I have for you is, as a ranking Justice Department official, will you do what the Congress directs, recognizing that the ultimate discretion is yours.

We have political alternatives. We can cut off your funding, which of course we really cannot do. We can have oversight hearings. We can express to you our statement of priorities.

In the final analysis, it is going to be a working relationship, nothing more, nothing less. This is an opportunity, when we have you for confirmation, to get an expectation as to what you will do.

That is why I ask the question in those bald terms.

Mr. **Keating**. Senator, the only thing that I can suggest to you is that my behavior in office will be similar to my behavior that you witnessed during the course of the last 24 hours.

You brought to my attention, asked for a meeting within a matter of a little more than an hour I brought to you the head of ATF, and senior managers from DEA and the Immigration Service.

Mr. Dennis did likewise, brought officials from Philadelphia, to attempt to implement your suggestions and to—I should say respond to your suggestions and implement those suggestions where they were in the best interests of law enforcement, nationally.

The difficulty with responding exactly to a committee language mandate is that it, as I understand it, does not suggest the—there is not the same as a mandate of statute, and we have—during the course of the last year I had an experience where the Department of Defense Authorization Bill had committee language which mandated us to do something that the Customs Service Appropriation Committee language mandated just the opposite.

I do not recall the specific incident, but there was a conflict between what the Department of Defense felt they were supposed to do and what we were supposed to do at Treasury for Customs.

So, the only thing I can say is, that absent a statute, when we see committee language, I view that as a heavy request, that this is a significant problem to a member and to the Senate, otherwise it would not have appeared in the committee's report, and we need to respond to it.

And that is exactly what I have asked Ed Dennis to do. That is what we are going to attempt to do in this particular area.

I cannot say that that is going to result in the assignment of the individuals that you requested. I do not know why those people were not put there.

Now perhaps there is a bigger problem in Los Angeles. I do not know. The only thing that I can say to you is that when we read a request from the Congress, that does have the heavy language in the committee report, we intend to respond as if it were just shy of the legislative mandate, in an attempt to resolve the problem according to the advice the Congress has given.

In the case you have mentioned, I have not been able, as I indicated, to examine the facts and circumstances behind that, but I assure you I will and will attempt to satisfy you fully.

Senator **Specter**. Well, Mr. Keating, where you cite an example about contradictory language from Department of Defense and for Treasury, I do not expect you to jump through hoops two ways, but that is not the kind of a situation which is posed here.

If you have contradictory language, I would not expect you to follow both. You would not know what to do. But this is an ongoing problem which the Appropriations Committee has faced, we face it in very stark terms with OMB, we face it in very stark terms with many of the Departments, and candidly, the answer you have given is not satisfactory.

Because it is more—and you say a Senator has made the request, but the Senator's request has been taken up by the committee, by the subcommittee, the committee, the whole Congress, and it stands there.

That is a legislative assessment of priorities. So it seems to me that there ought to be more comity given than a heavy request.

Frankly, after we put this language in the bills, and after confirmation processes are concluded, we have a very great difficulty in getting answers from the Attorney General on a continuing basis. That is a major problem we have.

So I say to you, in candor, that that is not an adequate response to this Senator, but I understand your position, and perhaps we can explore it more off the record than on the record.

Mr. KEATING. I will be happy to. Senator, as I indicated to you, Mr. Dennis and I will get together and attempt to be fully responsive to you as quickly as we can examine the facts and——

Senator SPECTER. Well, I intend to talk to you about that now. I am talking about the nature of a direction in committee language. I do not think it is useful for us to talk about it further today. You have given me your response and I do not find it adequate and we can talk about it off the record.

Perhaps we can talk about it more on the record later. Let me pick up the specific issues as to the Philadelphia situation, and in anticipating the problem, it did not take any great foresight to see that this issue would be descending on Philadelphia from the signals which we had theretofore.

It is a complex matter, and there are lots of parties who could be doing a great deal more. I discussed the matter at length, in the last several days, with the Philadelphia police commissioner and he has major problems.

What I think ought to be done is to have an increased Federal presence in Philadelphia, and perhaps, probably an increased Federal presence in other cities.

Now I complimented you earlier on your use of the Armed Career Criminal statute which gives an enhanced penalty, and a good procedure for dealing with career criminals who have been convicted of three or more offenses, and found in possession of a firearm.

You and I have already talked about your expansion of that program for the City of Philadelphia, and my request to you is to go further than that, and that is, it is difficult to find enough people in that category.

I intend to discuss this with Mr. Dennis because he and I have been working on this together for several years.

But my request to you, as I have given it to you informally before, and you have told me you will try to accommodate it, but I want to talk to you now on the record, is to try to have a greater Federal presence on narcotics prosecutions.

There are lots of problems with the Pennsylvania State court system in terms of insufficient number of judges. There have been many convicted on corrupt practices and ousted from the court.

There have been continuing problems on the Philadelphia State court dockets, and the adequacies of sentencing, and I believe it would be extremely useful for the Federal Government to have a great role—as the Congress said about a task force on drugs—to raise the Federal prosecution flag, and take more drug prosecutions within the Federal system, as you have a variety of statutes, picking out the more important ones.

I think it would put the drug dealers in Philadelphia on notice that there is going to be a tougher Federal prosecution. There are going to be mandatory sentences of 15 years to life for people who fall into these categories, and the Federal court in Philadelphia is well staffed with judges.

Some of their judges have gone elsewhere to help out on emergencies, and there is an issue as to whether there can be greater use of the U.S. Attorney's Office on the criminal side than on the civil side.

I reviewed this yesterday with representatives from the U.S. Attorney's Office and Mr. Dennis, and as I understand it there are some 63 positions, 45 on the criminal side and 18 on the civil side, and perhaps some can be utilized on the criminal side as we do frequently, and reallocation of resources. It is done all the time. You put more on the criminal side.

I have seen some court systems suspend their civil calendars when there is a kind of an emergency which is present, which is evident in the City of Philadelphia today, and my question is, for the record, a commitment by the Department of Justice to have a greater Federal participation, number one, on Armed Career Criminal prosecutions, but also, on other drug prosecutions, segregating out the more serious cases for action in the Federal courts.

Mr. KEATING. Senator, the Armed Career Criminal statute is one of the best statutes the Congress has passed to address the problem of the armed narcotics dealer.

As you know, ATF is very actively involved in those investigations, and that arrow in the quiver that we have been provided as prosecutors and as law enforcement officers has been immensely helpful, and we are just now beginning to use it throughout the country in a manner in which we should.

I can assure you that part of our lead agency strategy in the prosecutions field is to concentrate on the multistate, multinational, international cartels and dealers, the big operations who, regrettably, are much more active in the large cities of this country.

We also have placed crack prosecutions and investigations as top priority items. To the extent that those priorities will result in the placement of additional new resources in large cities such as Philadelphia, that will occur.

However, I would like to suggest a caveat. We cannot, in the Federal Government, respond with Federal resources when State and local Governments are cutting back on their own resources, and there are cities such as Philadelphia which I understand has cut back on numerous police officer positions, Senator. I think they are some 500 short of where they have been in the recent past.

If that is the case we would hope that Philadelphia would help us as well by staffing up their judges and police positions.

Senator **Specter**. I would hope they would, too, but this is a significant Federal problem. Drugs come into this country in interstate commerce, foreign bases, and there is a major Federal responsibility, and the Congress has said to the Department of Justice, we want a special effort made on Philadelphia.

It is not sufficient for this Senator to say, well, if Philadelphia does not have as many policemen on the street, that that is an excuse for the Federal Government not responding.

Mr. **Keating**. No, the Federal Government will respond, and we will, in the case of Philadelphia, respond to the extent that Federal resources are needed in response to Federal violations.

And as you have noted, the armed career criminal narcotics traffickers, interstate and international narcotics traffickers are Federal problems and a Federal responsibility, and we will respond.

Senator **Specter**. Well, there is a Federal violation, as you and I know, Mr. Keating, if you have a drug seller—that is a Federal violation. The Federal Government could undertake a great many more of the prosecutions than I frankly think the Federal Government presently does what I want to see done is I want to see an increased Federal prosecutorial presence in Philadelphia, like the Congress said several years ago. That is what I want to get done.

Mr. **Keating**. I have noted that, Senator, and as I have indicated, Mr. Dennis and I will get with you. I would need to examine the whole area. I have not looked at this until yesterday, and very briefly, yesterday.

But I assure you that we will examine the problem and attempt to be fully responsive to you and to the citizens of Philadelphia.

Senator **Specter**. Well, then we will have to await those events before commenting further. Thank you very much, Mr. Keating. Thank you, Mr. Chairman.

Senator **Heflin**. Thank you. There will be written questions submitted, Mr. Keating, and we would appreciate a response to them in a very rapid manner.

[The following responses were subsequently supplied for the record:]

U.S. Department of Justice

Office of the Associate Attorney General

The Associate Attorney General

Washington, D.C. 20530

August 2, 1988

Honorable Joseph R. Biden, Jr.
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

With reference to my confirmation hearing on July 27, enclosed are responses to the written questions submitted by several Members of the Committee.

On behalf of my family and myself, I deeply appreciate the very kind and gracious reception we received at the hearing. I am pleased to have this opportunity to comment on issues of interest to the Members of the Committee and stand ready to provide such further information as the Members may require in the consideration of my nomination.

Sincerely,

Frank Keating

Francis A. Keating II
Acting Associate Attorney General

Enclosures

cc: Honorable Strom Thurmond
Ranking Minority Member

Written Questions of Senator Leahy to Francis A. Keating II

1. The crimes Americans fear most probably are those that affect their persons -- murder, rape, assault, violent crimes -- and those that affect their children -- drug-related crimes. The front line of defense against such crimes is at the local level. The front line of victim assistance and other related services also is at the local level. In my view, the federal government plays a crucial role in this area by providing support to state and local criminal justice agencies.

We both are former local prosecutors. We can understand the problems faced by local criminal justice agencies. Are you bringing with you any ideas for programs that will enhance cooperation between federal, state, and local criminal justice agencies? What federal programs do you consider to be most helpful to state and local criminal justice agencies?

2. Drug abuse is an extraordinary problem. Drugs damage every level of our society by infecting the home, school, and workplace. Illegal drugs also breed theft and violence. In short, illegal drugs impose an incalculable hardship on America.

As Acting Chairman of the National Drug Policy Board's Enforcement Coordinating Group, you have been at the forefront of the government's strategy to counter drug trafficking into the United States. Have you had an opportunity to assess the effectiveness of the Enforcement Coordinating Group? How could its effectiveness be improved?

Many of our drug enforcement efforts have been stymied by rivalries among the Justice Department, the Treasury Department, the DEA, FBI and other federal agencies trying to fight drug abuse. Have you identified any ways to correct the problems caused by those rivalries?

3. Drug enforcement will be only one of the areas in which you, as Associate Attorney General, will be required to allocate the Justice Department's investigatory and prosecutorial resources. If confirmed, what factors will you take into account in deciding how to allocate the Department's resources?

4. At yesterday's hearing, Mr. Burns and Mr. Weld advised us to ask individuals nominated to top positions in the Justice Department what role, if any, they expect politics to play in the administration of their offices. It sounded as if they were asking us to give nominees a warning about the extent to

which political considerations could affect law enforcement decisions.

Do you expect politics to affect your ability to do your job?

What can Justice Department employees do to ensure that the rule of law takes priority over the political desires of the particular administration in power?

Will you contact this committee if you conclude that political considerations are inhibiting the Department's law enforcement mandate?

5. Mr. Keating, you mentioned that one of the issues you would like Congress to address before the end of this session is habeas corpus reform legislation. As a former prosecutor, I recognize the problems caused when criminal judgments are not finalized. I recognize that habeas petitions use precious court time.

It seems to me that S. 260, one of the bills designed to address habeas problems, has one critical flaw. It would enable the federal court to review the fairness of the state procedure, but if it was fair, the court could not review the correctness of the state court's interpretation of the federal constitution. Many experts think that this "full and fair" provision is unworkable.

Last year, Stephen Trott, while testifying for the Department, recognized the problems with the "full and fair" provision. He said that a federal judge could still reverse a state court's decision on a federal claim if that decision was "unreasonable."

Since prisoners can be expected to shift the focus of their petitions from the correctness of their legal claims to the reasonableness of the state court rulings on these claims, wouldn't this provision undermine the major reasons for habeas reform?

Do you think that the "full and fair" provision, as your predecessor interpreted it, will give rise to a great many suits on the reasonableness question?

Is it possible that a federal court's workload would increase since it would have to review both the substance of the claim and the state court procedures to determine both substantive reasonableness and procedural fairness?

Do you think the Congress would be better advised to work on habeas reform legislation that did not include this "full and fair" test? If not, why not?

Francis A. Keating II
Responses to Written Questions from Senator Leahy

Question No. 1

I agree that the Federal government plays a crucial role in providing leadership, support and assistance to state and local criminal justice agencies through a number of mechanisms. Included among these are the Asset Forfeiture and Equitable Sharing Program, the Law Enforcement Coordination initiative (LECC), the Victim Witness Assistance program, DEA's State and Local Task Forces, the Federal Law Enforcement Training Center (FLETC) State and Local Training and a number of other information sharing, research, training and technical assistance programs.

Chief among these are the programs which enhance operational cooperation and coordination of federal, state and local law enforcement agencies such as Operation Alliance, the Organized Crime Drug Enforcement Task Forces (OCDETF), LECCs, the State and local task forces and the Equitable Sharing program. In fact, the Equitable Sharing program is extremely cost-beneficial and an excellent incentive for increased intergovernmental coordination but it has been prevented from reaching its full potential for improved cooperation by procedural problems and delays. Therefore, one of my top priorities is streamlining the Asset Forfeiture process to expedite the transfer of equitably shared resources to state and local agencies where they will be put to use for law enforcement purposes. I have already taken the first steps necessary to eliminate delays in the award of equitably shared resources and have a number of related proposals under consideration.

In addition, I believe the Department plays a critical role in fostering law enforcement cooperation through a number of coordination mechanisms including the National Drug Policy Board (NDPB), the Executive Working Group for Federal State and Local Prosecutorial Relations (EWG) and the Law Enforcement Coordination activities carried out under the leadership of the U.S. Attorneys in each of the 94 judicial districts. The NDPB, EWG, and LEC initiatives each provide essential forums for sharing information, raising concerns, developing strategies, planning joint operations, debating differences and resolving law enforcement disputes. Through these mechanisms the concerns of state and local law enforcement are reflected in all aspects Departmental decisionmaking, including the NDPB strategies which were specifically revised to address concerns raised by state and local prosecutors and investigative agencies.

Question No. 2

Yes, I have assessed the effectiveness of the Law Enforcement Coordinating Group and I strongly believe it effectively serves several vital functions.

The Enforcement Coordinating Group provides a regular forum and established procedures for developing interagency strategies and policy, planning joint initiatives or operations and determining resource allocations. As specific measures of its effectiveness, the Law Enforcement Coordinating Group to date, has :

- o Developed Lead Agency Strategies and Implementation Plans;
- o Coordinated a number of operational programs such as Operation Alliance;
- o Resolved numerous interagency disputes; and
- o Coordinated a number of major legislative and policy initiatives.

As a rule, I believe that everything can be improved and we are continually evaluating suggestions from the membership to improve the Coordinating Group's effectiveness -- limiting the size, expanding the size, increasing the number of meetings, etc. All of the participants continually strive to improve the effectiveness and efficiency of the structure. However, overall the Coordinating Group has been functioning very well and has been responsible for what I consider to be a major improvement in the development and implementation of the nation's drug intelligence, investigation, interdiction, prosecution, and international enforcement policies.

While it is true that in the past many of our drug enforcement efforts have been hampered by competition and turf battles among the various Federal agencies. The majority of those problems existed prior to the creation of the NDPB which has had a very great degree of success in resolving such difficulties. The NDPB and Coordinating Groups bring together leading government officials at several levels -- cabinet members, agency heads, and program managers -- enabling them to discuss, plan, and coordinate operations and programs and, as importantly, to resolve interagency disputes. Simply put, interagency disputes are brought to the Coordinating Groups. If they cannot be resolved at that level (and they usually are), they are taken to the Policy Board. The Board has an outstanding record of resolving interagency disputes and facilitating coordination.

The Board:

- Made decisions to improve air interdiction capabilities in the Southeast United States (facilitated by development of Customs/Coast Guard MOU).
- Ensured establishment of a mechanism for collecting information on drug seizures and resolved conflicts among individual agencies on how the data should be accumulated.
- Helped formulate Operation Alliance -- a multiagency effort designed to control the flow of drugs, firearms, and illegal aliens across the southwest border.

To quote the GAO in its report of February 1988, "The Policy Board's efforts to facilitate coordination have been worthwhile and responsive to the requirements of the law establishing the Policy Board."

Question No. 3

The Resource Allocation process in the Department of Justice is structured to consider the recommendations of the Department's career professionals, the Administration's and Attorney General's policy priorities and Congressional guidance. The mechanism by which this is accomplished is the Departmental Resources Board (DRB) which consists of the Deputy Attorney General, the Associate Attorney General, the Chairman of the Attorney General's Advisory Committee of U.S. Attorneys and other policy makers and is staffed by the career personnel of the Justice Management Division. Prior to making final resource allocation recommendations to the Attorney General or preparing budget requests for submission to OMB, the DRB holds budget request review meetings to hear the views of each division and component. At these meetings, which are similar to OMB's hearings, the component heads are questioned by JMD's budget analysts as well as by the DRB members, including myself in order to determine resource needs and priorities.

The process, while time consuming, is impressively thorough and unbiased. It allows Departmental decision makers to become thoroughly familiar with each component's budget history, caseload, problems and priorities, prior to making any allocation determinations. Decisions can be made based upon a full picture of all competing Departmental needs and priorities. By participating in this process, and to the extent that OMB and Congressional actions allow, I can assure that all key factors are taken into consideration in the allocation of finite Departmental resources.

Question No. 4

While law enforcement policy cannot and should not be oblivious to the political process, the Department of Justice has procedures in place to guard against undue political influence. For example, inquiries from the White House are to be made at high levels of the Department rather than to line prosecutors or investigators. Similarly, Congressional inquiries, by policy, are to be directed to the Department's Office of Legislative Affairs. These procedures serve to protect against abuse.

Since coming to the Department in an "Acting" capacity in May, I have not witnessed any improper efforts to intrude upon the administration of the Office of the Associate Attorney General. If I believe that political pressure has rendered my continued service here untenable, I will resign.

Question No. 5

As I understand the Administration's habeas corpus reform proposal, it seeks to limit habeas review of completed state adjudications by requiring federal judicial deference to "full and fair" state adjudications and by establishing time limitations which include a generous series of exceptions to prevent injustice. I believe this is sound legislation which should be enacted.

As to burdening federal courts, I believe the time and effort conserved in avoiding the necessity, in essence, of relitigating completed state cases will more than offset the time required to determine whether the state proceeding was "full and fair." In short, I believe enactment of habeas corpus reform legislation would significantly lessen the workload of federal courts.

With respect to former Associate Attorney General Trott's observation, I have no dispute with his view that the bill would permit a federal court to overturn an "unreasonable" state decision even if arrived at through a full and fair trial. I have sufficient confidence in state courts, however, that decisions arrived at after a full and fair trial are virtually never going to be "unreasonable" and that, to the extent this does occur, it will be so rare as not to create any significant problem.

I believe the "full and fair" test should be retained. To remove it suggests to me a view that federal courts have a monopoly on justice and that federal courts should feel free to interfere in completed state adjudications so long as the petition for federal habeas review was timely filed.

QUESTIONS OF SENATOR METZENBAUM FOR FRANCIS KEATING II

1. THIS SPRING, PHILLIP MCGUIRE, ATF'S ASSOCIATE DIRECTOR FOR LAW ENFORCEMENT TESTIFIED BEFORE THE HOUSE SELECT COMMITTEE ON NARCOTICS ABUSE THAT "DRUGS AND FIREARMS GO HAND IN HAND." ACCORDING TO MCGUIRE THE MOST COMMON METHOD BY WHICH MEMBERS OF DRUG GANGS ACQUIRE FIREARMS "IS ILLEGAL PURCHASES FROM LEGITIMATE FIREARMS DEALERS." MR. MCGUIRE GOES ON TO POINT OUT THAT THESE FIREARMS ARE FREQUENTLY ACQUIRED IN STATES WHICH HAVE WEAK LAWS REGULATING THE SALE OF FIREARMS AND ARE THEN TRANSPORTED TO STATES WHERE PURCHASING FIREARMS IS MORE DIFFICULT.

WOULDN'T A NATIONAL MINIMUM WAITING PERIOD FOR HANDGUN PURCHASES TO PERMIT LOCAL POLICE TO CHECK OUT THE PURCHASER SEVERELY CUT INTO THE ABILITY OF DRUG TRAFFICKERS TO ACQUIRE LARGE QUANTITIES OF HIGH POWERED HANDGUNS?
WOULD YOU SUPPORT LEGISLATION TO REQUIRE A NATIONAL MINIMUM WAITING PERIOD FOR HANDGUN PURCHASES?
WHAT IS THE DEPARTMENT OF JUSTICE POSITION ON A NATIONAL MINIMUM WAITING PERIOD?

2. EARLIER THIS SPRING, ONE OF YOUR DEPUTIES TOLD A MEETING OF POLICE LEADERS AND SENATE STAFF THAT THE DEPARTMENT OF JUSTICE

REFUSED TO SUPPORT ANY BILL TO BAN UNDETECTABLE WEAPONS THAT WAS NOT SUPPORTED BY THE NRA.

WHAT POSSIBLE JUSTIFICATION IS THERE FOR THE UNITED STATES DEPARTMENT OF JUSTICE GIVING ANY SPECIAL INTEREST GROUP A VETO OVER IMPORTANT PUBLIC SAFETY LEGISLATION?

WHAT ASSURANCE CAN YOU GIVE THE SENATE THAT YOU WILL PUT THE INTERESTS OF LAW ENFORCEMENT AHEAD OF THE GUN LOBBY?

3. IN VIEW OF THE INCREASING EVIDENCE LINKING DRUG TRAFFICKERS TO FEDERAL FIREARMS VIOLATIONS, DO YOU SUPPORT ADDING SERIOUS FEDERAL FIREARMS FELONIES TO THE LIST OF RICO PREDICATES (SPECIFICALLY, VIOLATIONS OF 18 USC SECTIONS 922 (D), (G), (H), (I), (J) AND 924 (B))? WHAT IS THE DEPARTMENT OF JUSTICE, POSITION ON INCLUDING THESE OFFENSES AS RICO PREDICATES?

4. IF YOU ARE CONFIRMED AS ASSOCIATE ATTORNEY GENERAL, YOU WILL BE THE HIGHEST RANKING OFFICIAL AT THE DEPARTMENT, EXCEPT FOR MR. CHRISTIANSEN AND MR. THORNBURGH WHOM THE COMMITTEE WILL CONSIDER LATER. IN ADDITION, YOU HAVE SUPERVISORY AUTHORITY OVER THE OFFICE OF PROFESSIONAL RESPONSIBILITY. THEREFORE, IT IS POSSIBLE THAT THE QUESTION OF WHAT TO DO ABOUT THE REFERRAL BY THE INDEPENDENT COUNSEL WILL COME BEFORE YOU.

DO YOU BELIEVE THAT THE DEPARTMENT SHOULD COMPLETE THE INVESTIGATIONS REFERRED TO IT BY THE INDEPENDENT COUNSEL?

Francis A. Keating II
Responses to Written Questions from Senator Metzenbaum

Question No. 1

The Attorney General has indicated on several occasions that he favors a federal waiting period requirement for handgun purchases provided sufficient latitude is left to the various states to legislate in this area. I support the Attorney General's leadership on this issue.

Question No. 2

I am unaware that any of my present or former deputies have made such a statement as indicated. It is not the case that any special interest group has a "veto" over the Department's position on legislation. To the extent that the remarks alluded to arose in the context of the discussion of banning undetectable firearms, the efforts of the Attorney General were directed at developing a legislative compromise which could be enacted this year. This required attention to the respective positions of all interested organizations and agencies.

I believe my record as United States Attorney and Assistant Secretary of the Treasury for Enforcement demonstrates my commitment to the interests of law enforcement against any competing interest.

Question No. 3

As I indicated to you during our meeting some weeks ago, I personally have no objection to adding serious firearms offenses to the list of RICO predicates. The Department's position, however, is that such additions would dilute the RICO law. Rather, the Department favors strengthening penalties for serious firearms crimes, making such crimes predicates for pretrial detention under the Bail Reform Act of 1984, and amending the federal wiretap law to authorize court-ordered electronic surveillance in the investigation of serious firearms crimes.

Question No. 4

While the Office of the Associate Attorney General does not have supervisory authority over the Department's Office of Professional Responsibility (that is the responsibility of the Deputy Attorney General), I do believe that the Office of Professional Responsibility and the Department should complete any investigation referred to it by the Independent Counsel.

Question by Senator Metzenbaum

I and other Members of Congress have been following with great interest the matter of Joan Bernott, a senior attorney in the Civil Division whose request for extended maternity leave was denied by Mr. Bolton, the head of the Division.

I understand from Ms. Bernott's attorney that following Mr. Bolton's denial of her request on grounds that the medical evidence was not "administratively acceptable," your office intervened and found that there was more than adequate medical justification for the leave. On the other hand, I understand that the Department may be seeking to attach certain conditions to its approval of the leave request, specifically that Ms. Bernott agree to transfer to another division and to accept a three-day punitive suspension for failing to give Mr. Bolton all the backup medical data he was demanding.

I'm informed that Ms. Bernott furnished letters from her physicians and other supporting documentation, and that she was willing to provide full backup data, including the report by Dr. Ramey, provided that the Department would agree to assure its confidentiality. Ms. Bernott sought these assurances in order to guarantee the privacy of the personal medical information contained in the backup reports. My understanding is that Ms. Bernott did not produce this information because the Department would not give her the assurances she was seeking.

I understand and appreciate that your office has been a constructive influence in this matter, and trust that you will ensure that Ms. Bernott suffers no unwarranted disciplinary action. To this end, please advise me in writing of the status of the matter and of any actions that your office has taken or intends to take to resolve it in a fair and equitable manner.

Francis A. Keating II
Response to Written Question from Senator Metzenbaum

You have asked a number of questions relating to the matter involving Joan Bernott's request for extended maternity leave. The Deputy Attorney General's Office, which oversees the Civil Division, informs us that the matter is currently in the process of resolution.

SENATOR PAUL SIMON
FOLLOW UP QUESTIONS FOR FRANCIS A. KEATING II

1. The Committee has received reports of low morale at DOJ. What will you do to ensure the stability, integrity and high morale of the Department of Justice?

2. You belong to the Southern Hills Country Club in Tulsa, Oklahoma. Although the by-laws of the club are non-discriminatory, I understand that no blacks have been admitted to membership. As one of the highest officials of the Justice Department you should be a symbol of justice and fair play for all. Do you think your club membership might give the impression that you are not sensitive to minorities?

3. You stated that the only way to make drug use painful is to shut down the supply. What role will rehabilitation, education and prevention programs play in the Justice Department's war on narcotics?

Francis A. Keating II
Responses to Written Questions from Senator Simon

Question No. 1

You ask what I will do to ensure the stability, integrity, and high morale of the Department of Justice. As with any organization, these areas are of great importance and should be given high priority.

As I stated at my confirmation hearing, I have not personally observed a morale problem at the Department of Justice. I will endeavor, however, to be constantly aware of the morale, integrity, and stability of the Department of Justice. I shall try to lead through direction and example. In addition, the people I select to work with me will be of the highest calibre.

In choosing my four deputies, I made an effort to select people who would contribute to the stability and integrity of the Department generally and to the Associate's Office specifically. Two of these deputies are career Senior Executive Service employees who have a total of approximately 20 years of impeccable service in the Department of Justice. The other two non-career deputies were likewise seasoned professionals chosen from within the Department. All four are highly regarded by professionals within the Department of Justice.

Once Governor Thornburgh is confirmed, we expect that his leadership and organization will contribute positively to the overall mission at the Department of Justice and that, under his hand, the Department will continue to improve its efforts to assure that justice is served throughout the United States.

Question No. 2

Regarding your question about my membership in the Southern Hills Country Club in Tulsa, there are several factors which are important to understand. One factor is that the by-laws of the club not only are non-discriminatory, but they expressly prohibit discrimination. Likewise, the club adheres to this policy. We have among our members single women, Native Americans, and members of the Jewish faith. In short, the club does not discriminate based upon race, color, creed, national origin, and the like.

Another important factor is that the club's board of directors reports that no blacks have applied for club membership. Since the black population of Tulsa represents only a small percentage of Tulsa's populace, it is understandable how, absent discrimination, the club could be without black members. Let me stress, however, that I am informed that any black applying for membership would be treated identically to others who seek membership.

As you may know, I have long been committed to equal rights for all people. As Oklahoma state counsel to the NAACP, I not only have exhibited this commitment, but I have also demonstrated my sensitivity to discrimination based on race.

Question No. 3

In your question concerning the Justice Department's war on drugs, you ask about the role that rehabilitation, education, and prevention programs play in reducing demand. Clearly, demand reduction should be the first priority in any drug war if long-range success is to be achieved. In keeping with this, the President has made demand reduction the first priority of his drug strategy. Without elimination or substantial reduction in demand for drugs, this nation's efforts at solving the drug problem cannot be expected to meet with success. As long as there is a demand for illegal drugs, there will be a supply to meet that demand.

Achieving the needed demand reduction is not a simple task. Individuals with drug problems must rid themselves of these problems before we can expect that their demand for drugs will cease. We recognize that these people, in many cases, need treatment and such treatment should and does play a role in any reduction efforts. Likewise, education and prevention programs play an important role in the war against drugs. This war, however, like any war, will be won not through a single battle but through a coordinated and well-planned effort which is flexible enough to meet the changing profile of this pernicious enemy.

WRITTEN QUESTIONS TO BE SUBMITTED BY SENATOR KENNEDY

QUESTIONS FOR FRANCIS A. KEATING 2D:

-- ACCORDING TO MOST ESTIMATES, 75 PERCENT OF OUR FEDERAL DRUG ENFORCEMENT DOLLARS IS DEVOTED TO EFFORTS AIMED AT THE SUPPLY SIDE OF THE DRUG EQUATION AND ONLY 25 PERCENT OF THE DRUG BUDGET IS AIMED AT EFFORTS TO REDUCE THE DEMAND FOR DRUGS. DRUG ENFORCEMENT LEGISLATION PENDING IN CONGRESS WITH BIPARTISAN SUPPORT WOULD SHIFT THIS RATIO SIGNIFICANTLY. DO YOU AGREE WITH THE PREVAILING VIEW IN CONGRESS THAT EFFORTS TO REDUCE THE DEMAND FOR DRUGS ARE ESSENTIAL AND THE CURRENT DISTRIBUTION OF FEDERAL DRUG DOLLARS BETWEEN SUPPLY AND DEMAND IS INADEQUATE?

-- RECENT STUDIES BY THE RAND CORPORATION AND THE GENERAL ACCOUNTING OFFICE CONCLUDE THAT EFFORTS TO DIRECT MILITARY FORCES TO THE DRUG INTERDICTION EFFORT MAY HAVE ONLY MARGINAL VALUE. WOULD YOU AGREE THAT FUNDS SET ASIDE FOR EXPENSIVE MILITARY DRUG INTERDICTION MAY BE BETTER SPENT BY FEDERAL, STATE AND LOCAL LAW ENFORCEMENT?

Francis A. Keating II
Responses to Written Questions from Senator Kennedy

Question No. 1

I agree that Drug Demand Reduction efforts must be our top priority and that additional resources must be devoted to every aspect of a coordinated demand reduction strategy, including education, prevention, treatment, rehabilitation, testing and deterrence. However, I do not believe federal dollars are necessarily the determining factor in emphasizing the importance of the demand reduction side of the drug equation. This is for several reasons. First, and foremost is that the federal government has an overarching responsibility on the supply-side in addressing interstate and international drug enforcement concerns which are both uniquely federal and generally more expensive than many aspects of demand reduction. On the demand side, I believe that the federal role is one of providing focus, model programs, leadership, training, evaluation and technical assistance. A significant proportion of federal funds must continue to be devoted to more resource intensive enforcement-related initiatives.

Question No. 2

I do not entirely agree. While I believe some recent proposals to involve the military in traditionally civilian law enforcement activities would be less cost effective than enhancing federal, state and local law enforcement, overall, it is my view that the military is uniquely equipped, trained and qualified to provide a wide range of interdiction assistance. The Rand and GAO Reports cited were based upon incomplete information and limited experience with only part of the necessary components in place. The reports were not based upon an assessment of the effectiveness of a fully operative and integrated civilian/military interdiction effort because such a system has not yet been fully implemented. However, I am confident that once all the equipment and technology is in place and in operation, the involvement of the military in interdiction efforts will prove to be not only cost-effective but invaluable.

DRUG ENFORCEMENT QUESTIONS
FOR FRANCIS A. KEATING
ASSOC. ATTORNEY GENERAL-DESIGNATE

BY SEN. CHARLES E. GRASSLEY
JULY 27, 1988

……

MR. KEATING, I'D LIKE TO ASK YOU ABOUT THE FEASIBILITY OF ESTABLISHING DRUG-FREE WORKPLACES IN AMERICA.

IN LATE 1987, YOU TESTIFIED BEFORE A SENATE COMMITTEE FIELD HEARING REGARDING HOW THE 1986 ANTI-DRUG BILL WAS WORKING.

SENATOR GRAHAM OF FLORIDA ASKED YOU IF THE GOAL OF ACHIEVING DRUG-FREE WORKPLACES IN AMERICA COULD BE ATTAINED IF THE FEDERAL GOVERNMENT WAS NOT GOING TO BECOME THE EXAMPLE FOR THE NATION, AS FAR AS DRUG TREATMENT AND SUBSTANCE ABUSE PROGRAMS ARE CONCERNED.

YOU REPLIED -- AND I AM PARA-PHRASING -- THAT, WHILE NOT NECESSARILY DISAGREEING WITH THE GOAL, YOU WERE NOT SURE THAT THE FEDERAL GOVERNMENT SHOULD BE DICTATING TO THE PRIVATE SECTOR ON HOW TO PROVIDE FOR A DRUG-FREE WORKPLACE.

* DO YOU STILL MAINTAIN THAT POSITION ?

* IS THERE NO ROLE FOR THE FEDERAL GOVERNMENT TO PLAY IN THE EFFORT TO RID THE WORKPLACES OF THIS COUNTRY OF SUBSTANCE ABUSE ?

* WHAT IS YOUR POSITION REGARDING THE ESTABLISHMENT OF DRUG-FREE WORKPLACES THROUGH THE USE OF THE FOLLOWING INCENTIVES:

* AUTHORIZING DRUG-TESTING BY EMPLOYERS, SUBJECT TO APPROPRIATE SAFEGUARDS,

* CREATING A FEDERAL OFFICE OF DRUG-FREE WORKPLACES, POSSIBLY WITHIN OSHA,

* REQUIRING THE AGENCY TO FIND AND INVESTIGATE WORKPLACES THAT HAVE HISTORIES OF DRUG-RELATED SAFETY PROBLEMS AND TO MANDATE COMPLIANCE PROGRAMS IN THESE WORKPLACES, AND

* WITHOLDING FEDERAL CONTRACTS FROM COMPANIES THAT ARE FOUND NOT TO PROVIDE DRUG-FREE WORKPLACES ?

MR. KEATING, YOUR EXPERIENCE AT TREASURY INCLUDES ADMINISTRATIVE RESPONSIBILITIES OVER THE U.S. CUSTOMS BUREAU.

* PLEASE EXPLAIN HOW RECENT PROPOSALS TO IMPROVE BORDER PATROL DETECTION CAPABILITIES -- BY BOTH CIVILIAN AND MILITARY PERSONNEL -- WILL BENEFIT OUR NATION'S DRUG INTERDICTION EFFORTS ?

* WHAT IS YOUR OPINION OF TIGHTENING THE CURRENT REPORTING REQUIREMENT FOR CASH PURCHASES OF CONSUMER GOODS OF $10,000 OR MORE BY ESTABLISHING STIFF PENALTIES FOR THOSE ENTITIES -- BOTH FINANCIAL AND RETAIL -- THAT FAIL TO REPORT ?

* WHAT ABOUT ESTABLISHING INNOVATIVE PUNISHMENTS FOR DRUG OFFENDERS -- ESPECIALLY USERS -- THAT MIGHT PROVIDE A "MEASURED RESPONSE" TO ILLEGAL SUBSTANCE USE, SUCH AS:

* ASSET FORFEITURES,

* REVOCATION OF DRIVING PRIVILEGES AND/OR OTHER GOVERNMENT PROGRAMS (SUCH AS STUDENT LOANS, FHA LOANS, ETC.), AND

* EXPANDED REHABILITATION AND PROBATION AS ALTERNATIVES TO PRISON TERMS ?

MR. KEATING, WOULD YOU GIVE YOUR OPINION ON THE FOLLOWING ADDITIONAL PROPOSALS TO DEAL WITH OUR NATION'S DRUG PROBLEM:

- ESTABLISHING A DEATH PENALTY FOR DRUG KING-PINS AND DRUG-RELATED MURDERS ?

- ESTABLISHING A "THREE-TIME-LOSER" RULE FOR DRUG DEALERS, WITH MANDATORY LIFE SENTENCES FOR THIRD-TIME DRUG TRAFFICKING OFFENSES ?

- ESTABLISHING A SO-CALLED "BOUNTY HUNTER" STATUTE, THAT WOULD PROVIDE REWARDS FOR THOSE WHO GIVE INFORMATION LEADING TO THE INCARCERATION OF DRUG DEALERS ?

* ESTABLISHING TIGHTER CONTROLS ON THE CHEMICALS USED TO MAKE ILLEGAL DRUGS ?

* REQUIRING DRUG TESTS FOR PAROLEES OR TO REQUIRE DETAILED, LIFETIME FINANCIAL REPORTING BY CONVICTED DRUG DEALERS ?

* FURTHER TIGHTENING OF PENALTIES FOR SELLING TO MINORS OR FOR USING MINORS TO SELL DRUGS -- SAY, SOMETHING LIKE A MANDATORY TEN YEARS FOR THE FIRST OFFENSE AND LIFE WITHOUT PAROLE FOR THE SECOND OFFENSE ?

* INCREASING THE PENALTIES FOR JUVENILES WHO DEAL IN DRUGS ? SHOULD WE HOLD THEIR PARENTS RESPONSIBLE TO SOME EXTENT ?

Francis A. Keating II
Responses to Written Questions from Senator Grassley

It is certainly important in achieving our goal of a "Drug-Free Workplace" that the Federal Government be seen as doing its part in making federal job sites "drug-free." In addition, I believe that we should be urging private employers to do their share, a task which we can satisfy in part by demonstrating that Drug-Free Workplaces make economic sense as well as being the right thing to do. Moreover, I am sympathetic to the concept of requiring certain actions of private firms which receive significant benefits from the Federal Government in terms of government contracts, loans, or grants.

The point I was trying to make with Senator Graham was that we should take great care in attempting to establish federal requirements for the private sector generally. The wide diversity of private businesses and their varying needs and abilities with respect to controlling drug use by employees suggests to me that considerable latitude should be left to private employers. One advantage of such an approach is to leave room for innovation by the private sector.

As to the specific proposals mentioned, I favor statutory authorization of drug testing by employers. The effectiveness of legislation on this front is open to question, however, as courts evaluating drug testing plans have tended to premise unfavorable decisions upon the Constitution rather than the absence of statutory authority.

I have misgivings regarding the desirability of creating a new federal bureaucracy to look over the shoulders of private industry or to mandate drug control compliance programs. My view of analogous federal programs in other areas is that they have often disrupted business activity without showing meaningful progress in accomplishing their stated goals.

As indicated above, I am supportive of the concept of requiring businesses which receive a federal benefit to take steps to achieve a drug free workplace.

With respect to drug demand generally, I strongly believe that we must use every means available to us to ensure that there are adverse consequences for drug use. This should include forfeiture of conveyances in which drugs are used with the knowledge of the owner and suspension of driving privileges and other pertinent government benefits. I also favor frequent drug testing of those released from custody on bail, parole, or probation accompanied by firm penalties for those who use drugs while on release status.

I favor reinstitution of capital punishment for drug-related killings as approved by the Senate and believe this does serve as a deterrent. Equally important, the death penalty is often the only truly proportionate penalty for drug-related killings.

I have not previously seen the proposal of mandatory life imprisonment for three-time drug offenders but would have no objection to it assuming the drug offenses involved are felony trafficking offenses. The "bounty hunter" provision is troublesome as it could be seen as an invitation to vigilantism. Law enforcement professionals are generally wary of such "reward" proposals.

We have proposed tighter controls on chemicals used to make illegal drugs, to increase penalties for selling drugs to minors and to increase penalties for juveniles who sell drugs. I fully support these proposals. We have sufficient authority to require drug tests for federal probationers and parolees; the problem has been in funding these testing programs and in funding drug treatment programs. As to lifetime financial reporting for convicted drug dealers, the general principle has been that affirmative obligations of convicted persons may not extend beyond the term to which they were sentenced. This is not an insuperable bar to creation of such a financial reporting requirement but does suggest careful analysis of such a novel approach.

Several legislative proposals have been introduced in the Congress to improve the Border Patrol's drug interdiction capability between the ports of entry, which include resources for additional agents and detection equipment. These proposals would deploy agents and technology across the entire border, with special attention to those Border Patrol sectors experiencing the heaviest narcotics trafficking. With expanded resources, Border Patrol land interceptions of both illegal aliens and drug shipments, crossing the border between the ports of entry, would be significantly improved as would the deterrent effect of these activities.

In accordance with the DOD FY89 Authorization Bill (not yet signed into law), the Secretary of Defense is authorized to approve proposals by the State Governors for employment of National Guard forces in Title 32 status with funding support of up to $60 million. It is anticipated that law enforcement agencies, including the Border Patrol, will be prime beneficiaries of such plans.

Further, the same legislation mandates that DOD will be the lead agency for detecting and monitoring aerial and maritime vessels transiting drugs into the United States and for integrating C3I efforts. This will result in better target definition and, hence, more effective interdiction by all law enforcement agencies, including the Border Patrol, U.S. Customs Service and the Coast Guard.

When these enhanced detection and interdiction resources plus other pending initiatives are in place and operating, I believe the nation will see a substantial improvement in our supply side accomplishments.

Yes, I believe that tightening the current reporting requirement for cash purchases of consumer goods of $10,000 or more by establishing stiffer penalties for those entities -- both financial and retail -- that fail to report is necessary at this time. In my opinion, elevating the current penalty for failure to file IRS form 8300 pursuant to 26 U.S.C. 6050I from a misdemeanor to a felony would improve both compliance and enforcement efforts. Not only should the criminal penalty be a felony but the civil penalty for intentional violation of Section 6050I should be increased from the current 10% of the unreported transaction amount to 10% of the unreported transaction amount or the profits the trade or business derived from the transaction, whichever is greater. In cases involving intentional sales of luxury goods to drug traffickers, a 10% penalty is inadequate to reach the profits of the seller.

In addition, I believe an amendment to Section 6103 is needed to allow for disclosure of information reported under 6050I to other law enforcement agencies. At present under IRS disclosure restrictions, these reports which are, in many instances, of comparable interest in drug cases to reports covered by the Bank Secrecy Act (BSA), are not available for analysis and law enforcement access on a par with BSA information. This change is essential to facilitate sharing of the information currently reported with the appropriate law enforcement agencies. Both the increase of penalties, and relief from IRS disclosure restrictions are needed to improve compliance and related enforcement of existing laws.

Recommendations to this effect are included among the legislative proposals prepared by the National Drug Policy Board and approved by the President.

Senator **Heflin**. Mr. Dennis, if you will come forward. If you will raise your right hand and repeat after me.

Do you solemnly swear that the testimony that you will give at this hearing will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. **Dennis**. I do.

TESTIMONY OF EDWARD S.G. DENNIS, JR., ACTING ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, U.S. DEPARTMENT OF JUSTICE

Senator **Heflin**. Would you like to introduce members of your families and friends that you have with you at this time?

Mr. **Dennis**. Yes. I would. My wife Lois is in the front row. Ron Noble who is my chief of staff in the Criminal Division. My brother-in-law, Earl Simmons, and my sister, Carol Simmons. My niece, Stephanie Dennis, and my nephew, Ted Dennis. My father, Tim. My brother. My mother and father, Dr. and Mrs. Dennis.

Senator **Heflin**. Maybe they would like to come up and get this Associated Press to get a picture of them.

Mr. **Dennis**. If you have got a wide-angle lens, I——

Senator **Heflin**. Well, I reckon so. Come on. I think the doctor, and your mother, and the young folks look pretty good, too. Take a picture.

Mr. **Dennis**. Also in the audience are two assistants from the U.S. Attorney's Office in Philadelphia—Terri Marinari who is chief of the Criminal Division—I think Acting First Assistant now—and Terry Batty who is Chief of the Appeals Section in the U.S. Attorney's Office, and was my mentor when I was an assistant U.S. attorney in the U.S. Attorney's Office.

Senator **Heflin**. Who is keeping the shop? [Laughter.]

Mr. **Dennis**. I do not know. I hope that we have someone at the switch.

Senator **Heflin**. All right. Do you have a badge, young fellow? [Laughter.]

Mr. **Dennis**. We are going to make sure he gets one.

Senator **Heflin**. All right. We will get him a badge.

Mr. **Dennis**. Thank you very much.

Senator **Heflin**. Thank you. Senator Hatch has requested that he be allowed to go ahead and ask some questions. He has some things that—so I am willing, if that is agreeable with you, Senator Thurmond.

Senator **Thurmond**. That will be all right. I yield to him.

Senator **Hatch**. Thank you so much, Mr. Chairman, and thank you, Senator Thurmond.

I just want to ask a few questions, but first, I want to compliment you for being here. You did a terrific job there, as far as I can see.

Mr. **Dennis**. Thank you.

Senator **Hatch**. You convicted some of the worst criminals in this country. You presided over an office that really has done a very good job in a very, very difficult area, and plus you have to put up with another prosecutor who is sitting in the United States, who is always looking over your shoulder.

Senator **Specter**. That is what oversight is supposed to do, Senator Hatch.

Senator **Hatch**. That is right, and he does a very good job.

Senator **Specter**. Thank you.

Senator **Heflin**. But do not forget the judges.

Senator **Hatch**. Yes. The judge is over here. [Laughter.]

I just have a few questions to ask of you. First of all, you have been acting for how long?

Mr. **Dennis**. Two months. I started June the 1st.

Senator **Hatch**. For two months. When you got there, did you see any malaise in the Criminal Division?

Mr. **Dennis**. No, I did not see any malaise in the Criminal Division.

Senator **Hatch**. Did you see people who were not doing their jobs?

Mr. **Dennis**. No, I did not see people not doing——

Senator **Hatch**. Did you see people who were demoralized, or disenchanted, or otherwise felt they could not handle the situation because of the helter-skelter, and furor of the media, and others who have been finding certain faults with General Meese?

Mr. **Dennis**. No. I found the Criminal Division really conducting itself according to the highest professional standards.

Senator **Hatch**. The reason I ask you these questions is not to keep that controversy going, but those of us who deal with the Department of Justice regularly, sure, we realize there are people who have never liked General Meese. I mean, when you have thousands of employees, there is bound to be some who will never like him, and might not even like you. Why, they might not even like me. As a matter of fact, I know a lot of them who do not.

To make a long story short, the Department functions well, and it does a good job, and the American people need to know that, and I personally have resented—it seems to me—the gloaming for publicity that has occurred throughout this process, not only the hearing yesterday, but what at least one of those two men has been doing all over the media the last couple days.

On the other hand, I think General Meese—as much as I respect him and like him—probably should not have made some of the comments he made the day before, and I think that is what is causing a lot of this, and I think the public needs to know that.

But my experience is, yes, there are pockets always that are going to be irritated, or disenchanted, or may be upset, and I just wanted to bring it out that way because the Department is a great Department and it is going to operate well, and have you—since you have been there—in 2 months have you ever seen General Meese put any untoward demands on you?

Mr. **Dennis**. No, he has not. He has been very supportive.

Senator **Hatch**. Has he interfered with your division at all?

Mr. **Dennis**. No. He has, you know, heard me out on issues. He has followed my advice. I really believe our working relationship has been very good.

Senator **Hatch**. Has he, or any other person around him, that he has appointed, has any of them tried to put untoward or improper demands on you?

Mr. **Dennis**. No.

Senator HATCH. Or tried to influence you in any way that was contrary to your best interests, or what you think are the best interests of this Department and this country?

Mr. DENNIS. No, certainly not.

Senator HATCH. I think you will find that Mr. Weld would probably have said the same thing. I just wish I could have gotten back and asked him some of those questions.

Well, I wanted to ask those questions. There is a matter going on down there that I have a lot of concern for.

I have written a number of times. I know that Senator Specter and Senator Kennedy have written. Each of them has written concerning this, and that is the Richard Hirschfeld matter.

I am really concerned about grand jury proceedings being conducted in that manner. I am concerned about the approaches that have been taken.

I do not know what is right or what is wrong there, but are you willing to look into that?

Mr. DENNIS. Yes, I am, Senator Hatch. When I received some letters with regard to that situation I referred it immediately to the Office of Professional Responsibility.

I spoke to Henry Hudson in whose district the case was being handled. He said that he welcomed a review, he supported the action that his office had taken however, and the matter is being looked into by the Office of Professional Responsibility. So I think that——

Senator HATCH. Let me, because I promised to be short, let me just ask you to do this for me. I would like to have you, by Friday, if you will—which is a short time but nevertheless, 2½ days from now—I would like you to report back to us and tell us just where that is.

It is my understanding—I do not know what this grand jury proceeding is all about or anything else—but it is my understanding the man passed a lie detector test, he is an eminent attorney, and from all that I know he is a very fine person

And I have met him, and he appears to be a very good person. I would like you to follow up and give us a report on that, right on up to the extent that you can, so that we know what in the world is going on there, because it does not appear to be proper to me.

Mr. DENNIS. Well, you understand, Senator Hatch, that with regard to any grand jury proceedings there are very stringent secrecy requirements.

Senator HATCH. I do understand.

Mr. DENNIS. But I can certainly state what I believe has been the response from the Office of Professional Responsibility. That the matter, in terms of allegations of misconduct, are being vigorously pursued.

We have received at least a call from one of the lawyers involved in the case. He, at that juncture, seemed to be satisfied that the matter was getting appropriate attention, and as well I had suggested that if he felt that the abuses were serious enough, and I was not going to make a judgment that in fact his allegations had merit, but that the judge that had empaneled a grand jury is, at any time, available to review a motion that he might file with regard to those proceedings, and that could be made at any time.

And I think that that, really, was the proper forum, if he felt that there was some immediate need for judicial intervention in the matter. But I will be happy to respond to your question by Friday. That should be no problem.

Senator HATCH. Well, thank you. You can tell us whatever you can. I understand the confidentiality of grand jury proceedings and Rule 6.

Mr. DENNIS. Yes. No, I understand.

Senator HATCH. But I sure would like you to do that. It is one thing I wanted to cover here, today, and I appreciate the fact that I know you are looking into it and you will follow up on it. It is just a matter of great importance to, I think a number of us up here.

Senator SPECTER. If you would yield to me for one sentence, Senator Hatch.

Senator HATCH. I would be delighted to.

Senator SPECTER. I would join in Senator Hatch's request.

Senator HATCH. Yes. I have seen your correspondence, and I appreciate your being interested in it, and if you will do that for us we will appreciate it.

And I want to thank the Chairman and the Ranking Member for allowing me to go out of turn. I think you feel the same way, Senator Thurmond.

Senator THURMOND. I just want to say that I also feel the same way.

Senator HATCH. So, if you would do that we would appreciate it, and I will just stay in touch with you, but if we could have that written response by Friday, I would really appreciate it.

Mr. DENNIS. Fine.

Senator THURMOND. Anything that is appropriate. Of course if it is not appropriate——

Mr. DENNIS. No, I understand, Senator Thurmond.

Senator HATCH. No, we understand that. I also want to congratulate your family, you have a good family here, a good wife, and I want to congratulate them. They have to be very proud of you, as am I.

Mr. DENNIS. Well, I am very proud of them as well, and for their support.

Senator HATCH. And I congratulate Mr. Keating's family too. I think your son has held up pretty well under the circumstances.

Thanks so much, and thanks, Mr. Chairman.

Senator HEFLIN. Mr. Dennis, if confirmed, are you willing to make yourself available to testify before this committee, if the committee believes it needs to hear from you?

Mr. DENNIS. Certainly.

Senator HEFLIN. Mr. Dennis, in response to Senator Hatch's questions about your observations of malaise, or lack of morale, it would appear that you had different observations from Mr. Weld's.

How do you account—I am not saying which is correct, one way or the other—how do you account for those differences?

Mr. DENNIS. I did not hear Mr. Weld with regard to a question of malaise. I did see some of the hearings yesterday morning but I did not hear any comments from him with that regard.

In general, you know, I think that the Criminal Division is staffed with professional individuals, who I have known for some time, not just beginning in June, but when I started in 1980 as a section chief.

And I believe that although obviously it is an uncomfortable situation to have the Attorney General under investigation, that they know what their duty is and that is to support the mission of the Department of Justice, and they do their duty very well, and I am very proud of the staff in the Criminal Division. I think they really do a tremendous job.

Senator HEFLIN. Prior to your acceptance of your appointment, did you have any discussions with Mr. Weld?

Mr. DENNIS. No. I did not.

Senator HEFLIN. You did not feel that it was necessary to discuss the reasons with Mr. Weld for his resignation?

Mr. DENNIS. No. I felt that I would have to make the decision as to whether to accept that position pretty much based upon my own observations of what had occurred in the Department, reading in the press, that sort of thing, and also my own relationship with the Attorney General.

Senator HEFLIN. Did you receive any assurances that your functions, and your position would not be compromised if you accepted the position?

Mr. DENNIS. No. I placed no—I had no discussions, and no issues really came up in that regard. I sought no assurances. I accepted the nomination based on the assumption that I would be accorded the customary latitude of an Assistant Attorney General for the Criminal Division. The Attorney General is well aware of my reputation as a U.S. attorney, and I felt that we could have a working relationship that would hopefully be of benefit to the Department.

Senator HEFLIN. Well, then the media reports pertaining to the resignation of Mr. Weld did not raise sufficient questions in your mind to pursue the issue of what your relationship might be under the circumstances?

Mr. DENNIS. No, not my relationship with the Attorney General, certainly not. I have worked with Bill Weld, and I certainly have a great deal of respect for him, but as I said, I felt this was a decision that I was going to have to make pretty much on my own, and my objective was to hopefully be able to utilize the fact that I had been in the Criminal Division as a section chief, my experience as U.S. attorney, and my desire to want to be able to see the Department function well during what I considered a difficult period, is really what I wanted to accomplish in the Department, and I felt that I could do that, and so therefore I accepted.

Senator HEFLIN. In the prepared text of your June the 16th speech to the Criminal Division employees you stated: "Within the Federal law enforcement community, particularly out in the field, however, a somewhat fuzzy understanding of the Criminal Division's distinctive roles sometimes prevails."

Mr. Dennis, why do you believe there is a fuzzy understanding of the Criminal Division's distinctive role?

Mr. DENNIS. Well, I believe that in the field, it is often considered that the Criminal Division is really in competition with the U.S. Attorneys Office for litigation opportunities as opposed to really working in conjunction with them, to support them, to really be a strategic reserve in particular investigations of nationwide concern.

And I think that you have to constantly—as Assistant Attorney General for the Criminal Division I certainly had to do this as a section chief--reassure the U.S. attorneys that our relationship is not one that is competitive, but that we are working toward the same goals.

So I was there, in that speech, really trying to assure the Criminal Division that I had at least a firm grasp on what the role of the Criminal Division should be, and that I intended to make that as clear as possible to those who we would have to work with on a day to day basis.

Senator HEFLIN. Some complaints have been made against you by Mr. Paul Atkinson and Mr. Atkinson will testify at this hearing today.

Would you like to make any statements in regard to that matter?

Mr. DENNIS. No. I understand he'll be testifying so I will wait to hear his testimony.

Senator HEFLIN. All right. We will give you an opportunity to return after he testifies.

Some of us have commitments. I am going to have to adjourn the hearing until 1:15, when we will come back then and try to finish it before 2:00 since there are judicial nomination hearings at that time.

We stand in recess.

[A recess was taken at 12:10 p.m.]

AFTERNOON SESSION

Senator HEFLIN. Mr. Dennis, if you will take the witness chair, we will try to move ahead with some judicial nomination hearings scheduled at 2:00 o'clock, so I hope to finish before then.

Senator Grassley, you have some questions?

Senator GRASSLEY. Mr. Dennis, I want to apologize. I had to leave to attend some meetings from 11:30 until 1:00. Consequently, I was not able to hear the remarks you made.

I would like to make reference to my opening remarks, about what we heard about the Justice Department, regarding morale within the Department. I would like to have your analysis of that.

In the weeks that you have been on board running your division, what is your sense of morale, both among people closest to you and the career civil servants who make the Department go?

Mr. DENNIS. Well, as I stated earlier, I am very proud of the Criminal Division and the career attorneys and support personnel there. I think they do an outstanding job, and it is not question that this is a difficult period for the Department, but there is a high degree of professionalism.

I think we all realize that the work of the Department must go on, even though there may be controversies surrounding, or may have been controversies surrounding the Attorney General.

And my sense is that that sense of mission is well exhibited and has continued to be well exhibited within the Criminal Division, and among the career professionals that I have observed since being Assistant Attorney General or Acting Assistant Attorney General.

Senator GRASSLEY. We have heard about graffiti on the walls and friends being abused at cocktail parties.

Have you seen any graffiti on the walls of the Department's headquarters about the Attorney General?

Mr. DENNIS. No. I have not.

Senator GRASSLEY. Any of your friends been abused, or have you been verbally accosted at cocktail parties?

Mr. DENNIS. No. I mean, you know, sometimes you may be questioned about the controversy surrounding the Attorney General, but, you know, certainly nothing that should cause anyone to be—you know—to be concerned, or to lose heart.

I think the Department's mission is an important one, and I think the work we do is important, and I think that is what we focus on.

Senator GRASSLEY. Let's suppose that did happen. Would it make any difference to you, how you go about carrying out your mission, if that did occur?

Mr. DENNIS. No, not at all.

Senator GRASSLEY. Would it prevent you from doing the job the taxpayers pay you to do?

Mr. DENNIS. No.

Senator GRASSLEY. Given your background as the former head of the Criminal Division's narcotics and dangerous drugs section, and as a U.S. Attorney for the Eastern District of Pennsylvania, I would like to have you address the issue of further limiting the supplies of illegal drugs coming into the United States.

With your experience in such prominent investigations as La Cosa Nostra, in the Philadelphia/Atlantic City area, would you comment about establishing a Federal death penalty for drug kingpins, and drug-related murders?

Mr. DENNIS. Well, the death penalty is one that—is an issue that is supported, and legislation that is supported by the Department of Justice. I believe that we have submitted our own formal legislation in that regard.

There are certainly constitutional issues that will be raised with regard to the death penalty, primarily based upon Supreme Court precedent and Federal court precedent, that seems to limit its application to cases involving homicides.

But at least drug-related homicides certainly should not create a problem as a predicate for the application of the death penalty, and——

Senator GRASSLEY. Would it be a useful tool in the battle against drugs?

Mr. DENNIS. Well, I think it would certainly send the strongest message that can be sent by our society, that drug trafficking is one of the most serious offenses that we confront, and in that sense I think it would be helpful.

Senator GRASSLEY. What would you think of something along the line of what we call the "three-time loser" rule for drug dealers, with mandatory life sentences for third-time drug trafficking offenses?

Mr. **Dennis**. Well, we do have statutes, and I am in agreement with them, that tend to treat more harshly in terms of penalties those that have a career in criminal misconduct.

Senator Specter has mentioned the armed career criminal legislation which is basically structured on that approach, and certainly, in the drug area, that would be appropriate, to take into consideration the prior criminal record.

We do have sentencing guidelines, however, that if they are upheld—and they are being applied now—certainly do take into account the prior convictions of a defendant, and would mandate that the judge impose a much more substantial sentence where those convictions are a part of the defendant's prior criminal record.

But I have no opposition, in principle, to statutes that are structured on that basis, of a mandatory sentence for offenses committed after a defendant has had a prior conviction, or a number of prior convictions.

Senator **Grassley**. I thank you very much, Mr. Chairman.

Senator **Heflin**. Senator Specter.

Senator **Specter**. Thank you, Mr. Chairman.

Mr. Dennis, I am glad to see you here today. I reiterate my comments earlier about my support for your nomination.

Mr. **Dennis**. Happy to be here.

Senator **Specter**. I will not pursue with you the questions which I asked Mr. Keating about the response by the Department of Justice to congressional direction.

I do intend to repeat those questions tomorrow for Mr. Christensen, and I do intend to repeat them at the confirmation hearings of the Attorney General.

But I know that from your position as an Assistant Attorney General you do not establish that kind of policy. I think that a reasonable place to draw a line is with the Associate Attorney General.

Mr. **Dennis**. I understand.

Senator **Specter**. But I am very much concerned about—Mr. Keating is smiling behind you, maybe he thinks we ought to draw the line with the Deputy Attorney General. [Laughter.]

By the way, Mr. Dennis, I told you we would have a photographer for you here at 1:15. I was told that all the official photographers are indisposed, or exposed, but we are trying to find another camera so that we can take a picture of your family when the hearings are over, Mr. Keating's family as well.

Mr. **Dennis**. I appreciate that.

Senator **Specter**. It was nice they were able to attend. You do not get everybody assembled all on the same day, and we try to take the pictures as a matter of course, and when I wander around my offices in Pennsylvania, I see the pictures up, and they are a very nice memento.

I just got an affirmative nod that we are going to have a camera here.

I want to talk to you about a drug task force. Has there ever been any move to have a drug task force in the City of Philadelphia?

Mr. **Dennis**. Certainly, we have of course established in Philadelphia, under the Attorney General OCDETF program, a unit within the U.S. Attorney's Office that is staffed by experienced Assistant United States Attorneys, who work with Federal, State and local agencies on the most significant drug trafficking prosecutions and investigations in Philadelphia, and the surrounding areas.

Now, under that OCDETF program——

Senator **Specter**. Would you define what you mean by OCDETF.

Mr. **Dennis**. Yes. It is Organized Crime Drug Enforcement Task Force, and those have been set up around the country.

Within that framework, however, after a meeting with Ron Castille, myself, Kevin Tucker, who was then the commissioner of the Philadelphia police department, John Wilder who was then the special agent in charge of the Drug Enforcement Administration, and Don Cox, head of ATF—within the OCDETF program we established what we called a neighborhood drug dealers' project, and that project really had as its focus major drug trafficking problems in specific neighborhoods of Philadelphia, and we relied heavily upon the Philadelphia police department, and a very intensive and focused investigation into those neighborhoods where drug trafficking was open and notorious.

And through the course of that program, and that task force, if you will, we have been able to have an impact, although it has been somewhat limited, on a number of neighborhoods, yielding substantial numbers of arrests as well as substantial sentences and forfeitures.

We wanted to demonstrate that none of the drug dealers were immune from apprehension and prosecution if the resources were intelligently applied, and if they were applied in a focused manner. That project does continue.

Senator **Specter**. Mr. Dennis, I am not going to question you today about the reallocation of resources. We have covered that to some extent with Mr. Keating, and I had already thanked him for convening a meeting on Monday, where Mr. Keating was present in my office, and representatives of Drug Enforcement Administration, and Alcohol, Tobacco and Firearms, and Immigration. I thank you for coming yesterday, where we brought down representatives from the U.S. Attorney's Office, and Bill Chadwick, Mr. Chadwick, the first Assistant District Attorney.

And suffice it, at this stage of the record, for, on the conversations and dialogue I had with Mr. Keating. But I do want to follow up on that, and I may want to request a further hearing, depending on what we determine, but let us pursue it on an informal basis at this juncture to see what resources can be made available.

We have already talked about lawyers from the Land Division in Washington to supplement the staff in Philadelphia. We have had some preliminary talks about the possibility of reassigning some Civil Division people, although I understand that creates some difficulties.

So we will pursue that informally. There is no point in discussing it any further here until we have done that on an informal basis.

Mr. Dennis, I want to discuss with you, briefly, three subjects that I talked to you about when you and I met in my office right after your designation by the President.

I was pleased to see you at that time, and as you will recall, said that I thought it was most appropriate to have you proceed as

Acting Assistant Attorney General because the vacancy was present, until we could have these confirmation hearings. There is an unusual hiatus with the departure of Mr. Burns and Mr. Weld to have seen you in that role.

The three subjects that I talked to you about at that time, that I think are important to discuss, and on the record, are first of all, the MOVE matter, dating back to May 13th of 1985, and the fact that it is an ongoing investigative matter by the U.S. Department of Justice in the Civil Rights Division.

That case is not over, and it is still under investigation. I would appreciate it if you would put on the record this afternoon what has happened with that investigation, with respect to your own role in it, and with respect to its being assumed by the Civil Rights Division.

Mr. DENNIS. Well, after the unfortunate incident on May 13, 1985, I believe it was, a number of investigations were begun. One involved the mayor's commission which was established to hold public hearings with regard to the incident.

Another was a joint effort between the Civil Rights Division and my office to take a look at information that might rise to the level of justifying a full-fledged investigation, insofar as possible civil-rights violations were concerned.

During the course of the commission investigation, it was determined, jointly, between the Civil Rights Division and my office, that due to one, the involvement of my office in having to represent the Federal Bureau of Investigation with regard to a number of subpoenas that had been issued for the appearance of FBI agents before the MOVE commission in Philadelphia, as well as the fact that certain immunities that were being granted to Philadelphia police officers, and other witnesses, might taint the Federal investigation that the United States Attorney's Office should recuse itself from the investigation, and that those involved in the Civil Rights Division should do likewise, that had been exposed to this material.

From that point forward, there was a press announcement to that effect.

From that point forward the Civil Rights Division conducted an investigation separately and apart from the U.S. Attorney's Office. I have had no involvement in that since that time.

Of course as you know, the District Attorney's Office conducted its own investigation. A grand jury investigation I think lasted at least a year, perhaps a year and a half, and returned a report recommending against prosecutions in the MOVE incident.

At this juncture, as far as I know, the Civil Rights Division has not at least announced any conclusion to its investigation.

The MOVE commission issued a report basically critical of the handling of the incident but recommending that questions of criminal misconduct should be investigated by the District Attorney's Office.

Senator SPECTER. Now Mr. Dennis, at what point in that proceeding did you recuse yourself and the U.S. Attorney's Office?

Mr. DENNIS. I believe it was in October of 1985.

Senator SPECTER. What were the reasons for that recusal? If you could spell that out a little further.

Mr. **Dennis**. There were two reasons. One, my office had been involved in representing FBI agents who were being subpoenaed with regard to the issue of supplying C-4 that had—as the evidence had been developed—was used in the bomb that had been dropped, or the satchel of explosives that had been dropped on the home in Osage Avenue.

The second reason was with regard to the Civil Rights Division, and my office's feeling that it was too risky to continue to have my office, and those that had been involved in the investigation up to that time, continue with it because of certain Kastigar issues arising out of the fact that witnesses who were employed by the city were under threat of losing their jobs if they did not testify, if they took the fifth amendment.

And that that would in effect immunize their testimony in statements before the MOVE commission and——

Senator **Specter**. Would you hold on one minute?

[Brief pause.]

Senator **Specter**. Yes. Would you proceed?

Mr. **Dennis**. Would immunize those witnesses before the MOVE commission, and those that were exposed to that testimony would be tainted, and therefore, on the recommendation of the Civil Rights Division I recused myself, and others from within the Civil Rights Division themselves were recused, and a separate team was set up to carry forward the investigation at that point.

Senator **Specter**. The investigation by the Civil Rights Division continues to the present time?

Mr. **Dennis**. As far as I know it does, yes.

Senator **Specter**. Well, I met with the Deputy in charge of the Civil Rights Division at the same time you and I met, and reviewed the situation with him, and have urged them to complete the investigation at the earliest possible time.

There is an obvious time factor when you talk about May 13th of 1985 to July the 27th of 1988.

I think it is important that there be the public statement as to what has happened in that matter with respect to the Federal prosecutorial potential, prosecutorial involvement, that the matter is going forward yet, and that it is an open matter and there may be prosecutions from the Federal Government on that incident.

Mr. Dennis, one of the other two subjects that I want to talk to you about, briefly, is the overall relationship between the United States Attorney's Office and the District Attorney's Office, and that was in the context of my participation with you and District Attorney Castille, at the request of District Attorney Castille, on the organized crime investigation, and I would like to get your general views, both as they pertain to that matter, but more fundamentally, as they relate to generalized Justice Department policies on the kinds of interaction and cooperation between a U.S. Attorney's Office and a District Attorney's Office.

Mr. **Dennis**. As you know, Senator Specter, the policy of the Department of Justice has been strongly in favor of cooperative State, Federal and local law-enforcement initiatives.

In fact that has been formalized under the Law Enforcement Coordinating Committee program, in which I am in wholehearted agreement.

The District Attorney's Office in Philadelphia, and my office, I think have worked on more significant joint cases than at anytime in the history of the U.S. Attorney's Office, and I am pretty familiar with the history of the U.S. Attorney's Office, at least——

Senator SPECTER. Except perhaps when I was District Attorney.

Mr. DENNIS. Well, I certainly—we can compare notes, but I think that when you consider the fact that the DA's Office in Philadelphia, along with my office, were intimately involved in cases involving judicial corruption, the DA's Office handled itself magnificently—Ron Castille—the assistance of my office, there were differences of opinion and difficulties that had to be worked through, but the bottom line was that the cases were indicted, and were successfully prosecuted.

In the neighborhood drug dealers' project, we have had cross-designation of Assistant District Attorneys under the U.S. Attorney's Office, to work on a number of significant cases. That has worked very well.

In fact, as I mentioned in the judicial corruption area, we did have an Assistant District Attorney cross-designated, and tried one of the significant cases against Judge Harris, along with Gary Glazer and my office.

In the organized crime area——

Senator SPECTER. Would you just touch briefly on the Scarfo matters and then that——

Mr. DENNIS. Right. On the Scarfo matters, of course, the District Attorney's Office has had two prosecutions, one in the Phil Testa murder, and the other in the Frankie D'Alfonso murder which has not gone to trial. And there are other instances. So, you know, I am quite pleased with the results of our efforts and I think it is important that we have a partnership in this area.

Senator SPECTER. Is the U.S. Attorney's Office on the right track, now, with the DA's Office in the cooperation on organized crime matters?

Mr. DENNIS. I think both organizations are on the right track.

Senator SPECTER. The last matter which you and I discussed in my office several weeks ago relates to the Armed Career Criminal statute, and I would like your observations as to what might be done to expand the use of that program.

I understand that there are difficulties in getting the records compiled, so that you know you have a defendant found in the possession of a firearm who has had three prior convictions, to qualify for the enhanced sentence of 15 years to life. There have been major efforts to develop that in major jurisdictions.

Some jurisdictions have had more development than others, and I would like your views as to how that could be augmented, based on your experience as U.S. Attorney.

Mr. DENNIS. Well, I think the most successful program utilizing that statute really comes out of St. Louis. Tom Ditmeyer, the U.S. Attorney there, was kind enough to come to Philadelphia to actually speak to our Law Enforcement Coordinating Committee about his program there.

It is primarily directed towards a very thorough canvassing of rap sheets to determine the universe of individuals who might be subject to prosecution under the statute, and then, after a list is compiled, basically determining whether there is an informant information, or basis to suspect that these individuals who have three prior convictions are in fact violating the firearms statutes, are in possession of firearms.

And from that information you can be pro-active and pursue investigations, not having necessarily to await a particular slip of that defendant where he might be caught with a firearm in his car, that sort of thing. They have been very successful——

Senator SPECTER. How hard is it to get the criminal records?

Mr. DENNIS. Well, it is not hard to get the rap sheet, but the difficulty is that you really need to have a group of agents who are going to be able to cull through what may be thousands of documents, depending upon the state of your records in terms of computer runs, being able to identify those rap sheets, and not having to go through them manually to determine whether or not there are actual convictions there.

Once you get the rap sheet you still have to certify that those convictions are accurate. The rap sheet is not admissible in court.

So I mean, it is a job that is labor-intensive, but if you have the investigators you can certainly—and Tom has been very enthusiastic about the results that he has seen in his district.

Senator SPECTER. In St. Louis?

Mr. DENNIS. In his district, yes.

Senator SPECTER. Well, the Armed Career Criminal bill was designed to put leverage on guilty pleas in the State courts.

When I was district attorney, we had perhaps 500 career criminals, and if I had been able to send five of them down to the U.S. Attorney's Office, where they were tried promptly under the Speedy Trial Act, got 15 years to life, it would have induced a great many guilty pleas in the State court for perhaps 5 to 10 years, and would have been of enormous help on clearing the dockets.

One of the things that Mr. Keating has done in his previous job at Treasury with the Alcohol, Tobacco and Firearms unit has been to add extra personnel, and we are talking about that now for Philadelphia.

Following up on the discussions which we have had, I would appreciate your attention to this matter as Assistant Attorney General. We got good cooperation from Mr. Weld on this, to try to find some way to mechanize, computerize these record-keeping devices so that we could make better use of the Armed Career Criminal Act.

Mr. DENNIS. I understand.

Senator SPECTER. Thank you, Mr. Dennis. Thank you very much.

Mr. DENNIS. Thank you.

Senator HEFLIN. Senator Thurmond.

Senator THURMOND. Thank you, Mr. Chairman.

Mr. Dennis, I want to congratulate on your appointment to this important position.

Mr. DENNIS. Thank you, sir.

Senator THURMOND. It is a very important position. I think you have a fine record, and that resulted in your appointment here. I believe you graduated from the U.S. Merchant Marine Academy.

Mr. DENNIS. Yes, I did.

Senator THURMOND. That is a very fine school. And you got your degree in law at the University of Pennsylvania. You served as a law clerk to a law firm, and also in U.S. district court, you have been the chief of Narcotics and Dangerous Drug Section, Department of Justice, as well as serving as the U.S. attorney in Pennsylvania. So that gives you a fine background, and I predict you are going to do an outstanding job.

I just have a few questions here. Since 1983, I believe you have served in those positions. You have served as U.S. attorney in the Eastern District of Pennsylvania. Would you tell the committee what you feel were the major accomplishments of the U.S. Attorney's Office under your leadership?

Mr. DENNIS. Well, I am very proud of the fact that during my tenure, I think we have been able to have an impact in three separate areas. One has been in the area of organized crime wherein we were able to convict the boss of the Philadelphia Mafia and have under charges now a substantial number, almost half of his mob awaiting trial for very serious RICO and murder charges.

In the area of defense procurement fraud, we have had very significant cases, the General Electric case, Litton Industries, and a number of others, in which we not only won convictions of the corporations but also of officers who had been involved in fraudulent activity. And we have also been able to achieve substantial cash recoveries in the millions of dollars—Litton Industries was $17 million—as a result of these prosecutions.

Also in the drug area, we have had a number of significant prosecutions, the earliest of which really was the earliest convictions of defendants involved in the pizza connection case, which, of course, was carried forward in the Southern District of New York.

There are a number of others, and in the public corruption area I guess there are really four. We have had judicial corruption, police corruption, in which we have made major impacts, and also corruption within the Internal Revenue Service. So I feel that at least on a broad range of law enforcement concerns that we have been able to be effective.

Senator THURMOND. Now, Mr. Dennis, what would be your priority for enforcement efforts as they relate to the Criminal Division?

Mr. DENNIS. Well, I feel that we need to continue to be very active in the area of public corruption, and I know that there is legislation and the McNally litigation that will certainly help us in that regard. Narcotics and dangerous drugs is an area that I do not think anyone questions is a very high priority, probably our number one priority, and that we need to be very deeply involved in those prosecutions and investigations.

In the area of fraud, defense procurement fraud is a very high priority not only because of the fact that it is inherently a crime, but that it does affect the financial integrity of the United States.

Senator THURMOND. Mr. Dennis, what is your view with respect to the independence of strike forces from the Office of the U.S. Attorney in the areas where they operate?

Mr. DENNIS. Well, I think the strike forces have to have a much closer working relationship with the U.S. Attorney's Offices. I am very supportive of the work of the strike forces in Philadelphia. We have worked very well together. But I think that it is difficult to separate organized crime from other criminal activities, and that the U.S. attorneys really need to play a very strong role in setting forth the general plan of action for the strike forces and their offices, that they need to work very closely together, and that there should not be two separate agendas in any particular area in the law enforcement field.

Senator THURMOND. As I understand from your testimony, you intend to have as high priorities enforcement of organized crime, narcotics violations, and white collar crime. Is that correct?

Mr. DENNIS. That is correct.

Senator THURMOND. Is there anything else in particular that you can think of?

Mr. DENNIS. In terms of criminal law enforcement, I think those are going to be the major areas. Of course, we are called upon from time to time to handle specialized matters that are not really programmatic in scope, and we will try to do the most professional job we can with those.

Senator THURMOND. I have no other questions. I want to wish you well in your work over at the Department of Justice and I hear you are doing a fine job.

Mr. DENNIS. Thank you very much, Senator Thurmond.

Senator HEFLIN. There will be some written questions submitted, and we would appreciate a prompt response to them.

Thank you very much.

Mr. DENNIS. Thank you, Senator Heflin.

[The following responses were subsequently supplied for the record:]

U.S. Department of Justice

Criminal Division

Office of the Assistant Attorney General

Washington, D.C. 20530

AUG 2 1988

The Honorable Joseph R. Biden, Jr.
Chairman
Senate Committee on the Judiciary
Washington, D.C. 20510-6275

Dear Mr. Chairman:

This is in response to Chief Counsel Mark Gitenstein's letter of July 29, 1988 requesting answers to the Committee's follow-up questions addressed to me from the Department of Justice nominations hearing on July 27, 1988.

Sincerely,

Edward S.G. Dennis, Jr.
Acting Assistant Attorney General

Enclosures

Question No. 1 from Senator Simon

1. I am very concerned about the growing number of youth gangs which are spreading across the country. Forty six states report gang infiltration problems. As you well know, the economic base of gangs is drug trafficking. I have introduced legislation, along with Senator Bradley to combat this problem by providing a 15 million dollar grant program for community based programs. Much, more needs to be done on both the local level and national level to fight this problem. As head of the Criminal Division, what steps would you suggest we take to address this problem?

ANSWER: I personally share the Senator's concern with the sharply increasing number of youth gangs across the nation and their ofttimes violent domination of inner-city drug markets. As United States Attorney for the Eastern District of Pennsylvania, I experienced first-hand the rise of so-called "tape gangs" in Philadelphia -- youth gangs which earned the name "tape gangs" because each gang identified its particular "brand" of cocaine by a different color tape used to seal the envelope containing the cocaine. These gangs soon began to victimize entire neighborhood by converting them into round-the-clock "open air" drug markets. Competition between the rival gangs was marked by armed violence.

Beginning in 1986, the local District Attorney's Office and the United States Attorney's Office joined forces in a sustained offensive against these gangs. A law enforcement task force of federal agents and local police officers was created. The offensive began with the massive arrest of "street dealers" who form the bottom but most visible strata of each gang's pyramidical hierarchy. Many of these dealers agreed to cooperate with the task force either by providing information or, in some cases, by participating directly in the investigation in an undercover capacity. The task force soon began to penetrate each gang's hierarchy and ultimately identified, arrested and convicted the "ringleaders" for very serious federal offenses such as conducting a "continuing criminal enterprise." The federal asset forfeiture laws were also effectively employed against the "ringleaders."

This experience serves to illustrate that current federal drug laws, if effectively employed in a sustained and coordinated offensive, are adequate to complement the efforts of local governments to combat the spreading influence of youth gangs. All that is needed is a commitment by federal and local law enforcement personnel to cooperate in this effort. The organizational infrastructure to accomplish this goal already exists in the form of the thirteen regional Organized Crime Drug Enforcement Task Forces which consist of representatives from the various federal, state and local law enforcement agencies. In fact, these Task Forces recently assigned a very high priority to identifying and attacking drug-oriented youth gangs. I can assure you that, as head of the Criminal Division, I will see to it that this effort will remain a high priority and will be pursued actively and aggressively.

You mention in your question that recently introduced legislation proposes to combat the problem of youth gangs by appropriating $15 million dollars in grants to community-based agencies. This legislation is certainly laudable in purpose -- and the Department of Justice supports it in principle -- but we feel that, because of the antonomy of each of the recipient agencies, it is unlikely to result in the kind of coordinated and sustained nationwide offenses that the Organized Crime Drug Enforcement Task Forces (OCDETF) are capable of mounting. I feel that these Task Forces the appropriate framework into which additional resources should be added to address this emerging crime threat. The OCDETF structure allows for this deputization and overtime compensation of local police. The same structure permits the cross designation of federal and state prosecutions and permits the participants to use their statutes, expertise and resources to its greatest potential. However, there is a clear and pressing need for additional federal prosecutors, both within the Criminal Division of the Department of Justice and in the Organized Crime Drug Enforcement Task Forces of the United States Attorney's offices, to handle the increasing federal case load that such offensives are likely to generate. I urge the Congress to add substantially to the ranks of federal prosecutors as part of the federal drug legislation currently under consideration.

Question No. 2 from Senator Simon

2. America is deeply troubled by the growing problems of drug abuse. Recent reports indicate that the problem is not limited to major metropolitan areas, but is spreading to small towns as well. The head of the DEA, John Lawn testified that because of limited resources most DEA resources must go to the major drug trafficking areas. What role do you think the Criminal Division can provide to fill in the void and help rural communities combat drugs?

ANSWER: It is undeniable that no part of the United States -- and no segment of America society -- currently is untouched or unaffected by the epidemic of drug abuse. Every citizen has been affected to some extent and the "war on drugs" has properly become a critical issue of national and bipartisan concern. I agree, however, with the observation of John Lawn, the Administrator of the DEA, that DEA's resources are limited and must primarily be devoted to the major drug trafficking areas from which most of the drugs reaching small town and rural areas derive.

This is not to suggest that small towns are rural areas have been abandoned as part of our national drug control policy. It only reflects the fact that there is an area within that strategy where state and local law enforcement agencies must take primary responsibility. The Criminal Division of the Department of Justice recognizes that such state and local law enforcement agencies are capable of playing a vital role in the "war on drugs" and has undertaken to provide those agencies with critical support under the auspices of the Organized Crime Drug Enforcement Task Forces. It also provides support by conducting demonstration projects and providing those agencies with model legislation. Congress has played its part by creating an incentive for those agencies through the "equitable sharing" of assets seized and federally forfeited as a result of joint federal and state or local drug investigations. This supportive role will continue; indeed, I expect it to expand. But the harsh reality is that federal law enforcement cannot be all things, to all people, in all places, at all times. It is primarily the responsibility of state and local officials to seize the initiative and enforce their drug laws in the "secondary drug markets" that exist in small towns and rural areas. The Criminal Division is pledged to help them in this regard. One example of this help is the utilization of the Criminal Division's prosecutors to assist the United States Attorney's offices in cases and prosecutions for which that office lacks trained resources. Obviously, the Criminal Division is called upon most often to assist the smaller rural offices rather than the major urban centers. I will continue to give this active support to supplement the United States Attorney's offices with my own limited resources.

Question No. 3 from Senator Simon

3. In 1987 the Supreme Court in McNally v. United States sharply limited the ability of the federal government to prosecute public corruption cases. I am particularly concerned about the impact of this decision on the Greylord decision in Illinois. As you may know it took the Department of Justice one year to respond to this problem. Some suggest that the Department's proposal is too narrow in that it does not address the intangible rights doctrine in cases not involving public officials. What are your views on this issue?

A. In McNally v. United States, 107 S. Ct. 2875, the Supreme Court overruled a long and consistent line of cases and rejected the well established principle that the mail fraud statute prohibits deprivations of intangible rights. By implication, the decision limits the wire fraud statute as well. The scope of the McNally decision was clarified in Carpenter v. United States, 108 S. Ct. 316 which indicated that McNally did not prevent the prosecution of fraud cases involving intangible property rights, as long as the loss to the victim can be valued in monetary terms. In Carpenter, the Court ruled that an employee of the Wall Street Journal who misappropriated confidential business information had deprived his employer of "property" within the meaning of the mail fraud statute.

Thus, the government can still prosecute a wide variety of pecuniary crimes that do not involve public officials under the mail and wire fraud statutes. For that matter, pecuniary crimes that do involve public officials can also still be prosecuted under the mail and wire fraud statutes.

Nevertheless, the McNally decision has resulted in the dismissal or overturning of political corruption cases brought under the mail fraud statute. It is to fill this gap that the Department has proposed and sent to the Congress in May of this year legislation explicitly proscribing corruption and dishonest conduct in government at the local, state, and federal levels. The jurisdictional bases for federal prosecution would include not only the use of the mails or wire facilities, but also schemes having an effect on interstate commerce. If enacted, the statute would restore federal jurisdiction over cases involving public officials and election fraud previously brought under the "intangible rights" theory. These, in our view, are the most important types of cases concerning public officials and the cases over which federal interest is the greatest.

Question No. 1 from Senator Leahy

1. As United States Attorney in Philadelphia over the past five years, you have worked in the field in consultation with the Justice Department's Criminal Division in Washington.

In what ways does the Division assist U.S. Attorneys so that they can accomplish their goals?

ANSWER: The Criminal Division has been, and should continue to be, at the forefront of developing new enforcement approaches to emerging law enforcement problems. The Division has the responsibility to operate on the cutting edge, to experiment with new techniques, to figure out what works and what does not. When the Division can do that, and when it can get the word out to (and back from) the field, the Division earns its keep. Often times this sort of work is a long-term investment that pays off at a time and place pretty far removed from the original effort.

Some examples of successful Division investments have come in the Fraud area. In the late seventies and early eighties, Division attorneys went out to U.S. Attorneys' Offices all over the country to set up Economic Crime Enforcement Units. These units, though perhaps not perfect, were instrumental in establishing credible, sophisticated white collar criminal prosecutions out in the field, and their impact is still felt today.

More recently, the Defense Procurement Fraud Unit ("DPFU") has been the catalyst for aggressive investigation and prosecution of defense procurement fraud. In Philadelphia we have been fortunate to prosecute several high profile cases in this area, such as General Electric, Litton Industries, and the Defense Personnel Support Center. Those investigations, like the current defense procurement investigation at the Pentagon, would have been unheard of ten years ago.

Question: Are there any ways in which the Division and the U.S. Attorneys' Offices around the country need to cooperate more? If so, as head of the Criminal Division, what can you do to improve interaction between Washington and the U.S. Attorneys' Offices?

ANSWER: I am a firm believer that an organization should never become complacent about the work it performs. Consistent with that philosophy, I believe that the Criminal Division and the individual United States Attorney's Offices could cooperate more. Specifically, the individual United States Attorney's Offices could rely on the Criminal Division more in cases that may be cases of first impression for the individual U.S. Attorney's Office concerned, but cases that have been visited on several occasions by the career attorneys at the Department of Justice. The Criminal Division, on the other hand, could improve the functioning of the U.S. Attorney's Offices by developing procedures whereby the dissemination of information on the cutting edge of the law would become institutionalized. For example, on the *McNally* issue, until there is a legislative remedy, the Criminal Division could monitor experiences of United States Attorneys throughout the country and share with all United States Attorneys the best responses to the *McNally* problem.

Question: If confirmed, what will you try to do to help U.S. Attorneys get their jobs done?

ANSWER: If confirmed, I can assist United States Attorneys in getting their job done in two principal ways: first, by ensuring that the Criminal Division continues to operate on the cutting edge of the law and remains well trained and staffed and second, by building on the personal relations I established with most of the U.S. Attorneys during my tenure as United States Attorney for the Eastern District of Pennsylvania. This will inure to the benefit of the United States Attorneys when they experience particular problems and turn to the Criminal Division for assistance. They will know that the person heading the Criminal Division has experienced many of the same problems first hand and will not feel as though decisions affecting them are being made by someone who does not understand their problems. In short, if confirmed, I will work to ensure that the lines of communication between the United States Attorney's Offices and the Criminal Division remain both open and utilized.

Question No. 2 from Senator Leahy

2. You testified that, as United States Attorney, you worked closely with state and local law enforcement officials. What cooperative programs between the Department and state and local law enforcement officials did you find most helpful to you? In what areas would you want the Department to develop cooperative programs with these law enforcement officials?

ANSWER: The cooperative program between state, local and federal law enforcement officials that I found most effective as United States Attorney for the Eastern District of Pennsylvania was the Neighborhood Drug Dealers' Project (NDDP). The need for this project arose during late 1985, when the City of Philadelphia experienced a significant increase in the nature and quantity of street-level cocaine sales in a primarily residential section of the city known as Hunting Park. These open and concentrated sales virtually immobilized portions of the Hunting Park neighborhood, centering on the intersection of 8th and Butler, where dozens of drug sellers approached automobiles touting their wares twenty-four hours per day. Normal family life in the area became nearly impossible as children too young to attend school began, at play, to mimic the drug sellers' sales pitches.

Because of the nature of their controlling laws, local law enforcement officials provided no deterrence, as these increasingly sophisticated organizations employed juveniles and young adults with no previous criminal records pooled their resources into bail funds so that sellers arrested by local police often returned to their sales within hours of their arrests. When finally brought to trial, most escaped with minimal jail sentences or none at all. The federal criminal statutes governing bail and sentencing offered Philadelphia an option in combatting the drug dealers. Thus, in January 1986, in response to this increasing problem in the community, a meeting was held among the heads of various federal and local law enforcement agencies under the guidance and initiative of the United States Attorney's Office for the Eastern District of Pennsylvania. This meeting resulted in the formation of the Neighborhood Drug Dealers Project (NDDP), a coordinated federal-state operation conducted under the auspices of the President's Organized Crime Drug Enforcement Task Force (OCDETF).

From its inception, the Project has focused upon specific Philadelphia neighborhoods, with emphasis on those in which the problem was particularly acute and where local investigative and prosecutive resources had been ineffective. Cases are prosecuted in federal court in order to take full advantage of federal statutes proscribing sales near schools, sales using juveniles, maintaining properties for drug distribution, and the like, a well as the pretrial detention provisions of the Bail Reform Act of 1984. Prosecutions have been handled by two Assistant United

States Attorneys, one attorney specially assigned to the Project by the Narcotics and Dangerous Drug Section of DOJ, and two Assistant District Attorneys cross-designated for this purpose.

Perhaps the most unique features of the Neighborhood Drug Dealers Project, which have contributed significantly to its success, are the unprecedented degree of coordination and cooperation among its component investigative and prosecutive agencies, and the considerable involvement of the community in that process. In addition to supervising investigations and prosecuting criminal cases, representatives of the United States Attorney's Office for the Eastern District of Pennsylvania maintain direct and ongoing contact with the various Philadelphia communities, addressing its citizen in a series of Mayor's Neighborhood Drug Summits, speaking in public schools and churches, and participating in meetings of concerned community members. As a result of this hands-on approach, residents of victimized communities, the community leaders, have participated in the Project by testifying at detention hearings and sentencings, and by becoming a heretofore untapped source of intelligence, providing detailed information on the traffickers, their associates, and their assets.

Both citizens and former traffickers have reported that traffickers have become keenly aware of the Neighborhood Drug Dealers Project and its work.

To date, more than one hundred persons have been prosecuted under this Project. The first group, indicted as Phase One in June 1986, focused on the street-level traffickers employed by the various organizations. Following the conviction and later cooperation of these individuals, a clear picture emerged of the organizations which controlled cocaine trafficking in the Hunting Park area. Some of these organizations generated profits of as much as one million dollars per month.

The indictment of 56 persons in Phase Two of the Project served to immobilize several of these organizations, and yielded, through the cooperation of numerous convicted traffickers, greater inroads into the larger trafficking operations which supply the neighborhood organizations, as well as other organizations and individuals engaged in related roles, including money laundering.

Although the Neighborhood Drug Dealers' Project was planned to last approximately two years, it has, because of its success in the Hunting Park area, continued to operate in that neighborhood and other parts of the city where traditional methods have failed. The United States Attorney's Office for the Eastern District of Pennsylvania has been called upon, on numerous occasions, to provide guidance and advice to other jurisdictions, both local and federal, in establishing their own Neighborhood Drug Dealers Projects.

In my view, the success of the Philadelphia Neighborhood Drug Dealers' Project can easily be transferred to other United States Attorney's Offices throughout the country. As Assistant Attorney General for the Criminal Division, I would work to ensure that my experience in Philadelphia is shared with United States Attorneys so they may consider developing a coordinated federal, state and local approach to the very serious drug problem this country faces today.

Question No. 3 from Senator Leahy

3. In my view, the Fourth Amendment's protection against unreasonable searches and seizures is a cornerstone of our liberty. It is a guarantor of privacy or, as Justice Brandeis stated years ago, "the right to be let alone." I support the exclusionary rule because it gives teeth and muscle to the Fourth Amendment. Without the exclusionary rule, the Fourth Amendment would be hollow words.

As a judge, FBI Director William Sessions had the oportunity to see the exclusionary rule in action. I was heartened to hear him say at his September 1987 confirmation hearing that he generally supports the exclusionary rule "the way it is."

As a prosecutor, you also saw the exclusionary rule in action. What are your views on the exclusionary rule? Do you support it "the way it is?" How do you think it affected job performance by law enforcement officials? When I was a prosecutor, the exclusionary rule made it easier for me to prosecute cases because it encouraged police to do their jobs better. Did you find the exclusionary rule assisted prosecutors?

ANSWER: As a prosecutor, I have found that the exclusionary rule has contributed significantly to the professionalism of our investigative agencies. The rule has required that law enforcement officers take into account in a very concrete way the constitutional rights of suspects during criminal investigations. The fact that the manner in which investigations are conducted will be subject to judicial scrutiny, resulting in possible suppression of critical evidence when constitutional rights are violated, has been a constructive influence overall. I believe that the exclusionary rule has increased public confidence in the integrity of our criminal justice system. In my own experience, I have not been involved in a case in which I felt that the exclusionary rule had been applied inappropriately. In short, while I am not necessarily opposed to a search for alternatives, or to the position of those who feel the courts should have greater discretion in its imposition, I generally support the exclusionary rule.

Question No. 4 from Senator Leahy

4. At yesterday's hearing, Mr. Burns and Mr. Weld advised us to ask individuals nominated to top positions in the Justice Department what role, if any, they expect politics to play in the administration of their offices. It sounded as if they were asking us to give nominees a warning about the extent to which political considerations could affect law enforcement decisions.

Do you expect politics to affect your ability to do your job?

ANSWER: Partisan politics will not be a factor that I will consider in executing my duties should I be confirmed as Assistant Attorney General for the Criminal Division.

Question: What can Justice Department employees do to ensure that the rule of law takes priority over the political desires of the particular administration in power?

ANSWER: Justice Department employees must continue to be guided by professional ethics and their sense of integrity if confronted with a situation where partisan political considerations are being taken into account with regard to deciding a particular case. In my view, in that situation the Department employee should immediately reject the suggestion and should vigorously oppose the intrusion of such considerations.

Question: Will you contact this Committee if you conclude that political considerations are inhibiting the Department's law enforcement mandate?

ANSWER: My first reaction would be to forcefully oppose the intrusion of partisan political considerations in a criminal case. If that failed to correct the situation, I would consider contacting this Committee as an option available to me.

Question No. 1 from Senator Grassley

1. What about using improved Border Patrol detection capabilities -- by both civilian and military personnel -- to beef-up our interdiction efforts?

ANSWER: I am uncertain exactly what you mean by "improved border detection capabilities" but I can assure you that this Administration -- and the Criminal Division of the Department of Justice in particular -- are firmly committed to using whatever capabilities are reasonably available to enhance our drug interdiction efforts. It should be noted, however, that every conceivable detection capability must be reviewed from the standpoint of budget constraints, impact on military preparedness, and overall effectiveness in detecting and deterring drug smuggling. For example, it might be possible to seal our nation's border with Mexico by stationing umpteen battalions of infantry along the entire border on a round-the-clock basis. Such an effort might effectively end all land-based smuggling across the border but at a cost of bankrupting our defense budget and severely impairing our military preparedness. It would also do nothing to stop aerial or maritime smuggling. Where the means are feasible, affordable and effective, however, we should not hesitate to employe them to the fullest extent in the "war on drugs."

I would also point out that every dollar spent from the general drug enforcement budget on improved drug interdiction capabilities means that there is one less dollar available to augment our understaffed corp of federal prosecutors charged with handling the ever-increasing number of drug cases. Thus, while the Department of Justice strongly supports appropriations for improved detection capabilities, we feel that there is also a critical shortage of federal prosecutors which must be addressed.

Question No. 2 from Senator Grassley

2. Would you recommend establishing a so-called "bounty hunter" statute that would provide rewards for those who give information leading to the incarceration of drug dealers?

ANSWER: Federal law already authorizes the Attorney General or his designee to make payments for information pertaining to violations of the Controlled Substances Act. *See* 21 U.S.C. § 886(a). This authority has been used on many occasions. Thus, there is no need for such a "bounty hunter" statute.

I note, moreover, that your question specifically refers to payments for information "leading to the incarceration of drug dealers." It has been the policy of the Department of Justice that payments made for information concerning criminal conduct are made without conditions pertaining to the ultimate success or failure of any resulting criminal prosecutions. This policy is dictated by a number of prudential and prosecutorial concerns, not the least of which is concern that the information be truthful and accurate and that there be no incentive to "shade the truth," particularly where the person giving the information will be called to testify under oath at trial. Thus, we remain strongly opposed to any effort to "condition" such payments on the ultimate incarceration of the criminal wrongdoer.

Question No. 3 from Senator Grassley

Your experience in the government's criminal case against Nicodemo Scarfo, the reputed head of La Cosa Nostra in the Philadelphia-Atlantic City area, included control of the importation of liquid P2P, a key ingredient in the manufacture of the drug 'speed'. Control of this liquid can mean control of the market for 'speed' in a given area of the country.

What is your opinion of establishing tighter federal sanctions against the chemicals used to make illegal drugs?

The regulation of chemicals used in the manufacture of controlled substances is in my view an important goal because of the link between these chemicals and illegal drug distribution. The Administration is urging the enactment of legislation to authorize the regulation of these chemicals.

Your inquiry addresses "tighter federal sanctions" aimed at the chemicals used in illegal drug manufacture. However, for many such chemicals it is not a question of tighter sanctions but the authority to regulate where no such authority currently exists. The Controlled Substances Act authorizes the control of only immediate precursor chemicals of scheduled controlled substances. Phenyl-2-propanone (P2P), cited in your question, is such an immediate precursor and is used in the manufacture of amphetamine and methamphetamine. I do not believe that violations involving scheduled, immediate precursors of controlled substances should be subject to more severe sanctions than the controlled substances themselves or that there is currently a need to increase the penalties for these substances. However, there are many chemicals used in the production of controlled substances that are not immediate precursors. Therefore, the Administration has proposed the Chemical Diversion and Trafficking Act, which is similar to S. 1861 as introduced. The Administration's proposal would provide for the regulation of specified precursor chemicals, defined as substances that may be used in the chemical process of manufacturing controlled substances, are incorporated into the final product, and are therefore critical to their manufacture; and essential chemicals, defined as substances that may be used in the chemical process of manufacturing controlled substances as solvents, reagents, or catalysts.

The proposed Chemical Diversion and Trafficking Act strikes a balance between the need for enhancement of the law enforcement effort to curtail the diversion of precursor and essential chemicals and the need to provide for the use of these chemicals for legitimate activities. It would impose the following requirements with respect to specified chemicals: (1) maintaining sales records and making these records available to the Drug Enforcement Administration for inspection; (2) certification of lawful use and identification for purchasers; and (3) importation and exportation permits or declarations. The Administration's proposal authorizes the Attorney General to establish a threshold quantity for recordkeeping and reporting requirements that would have the effect of exempting lesser quantities from certain of these requirements.

Question Number 4 from Senator Grassley.

4. Do you believe that it would be a good idea to require drug tests for parolees or to require detailed, lifetime financial reporting by convicted drug dealers?

The Department has just begun to consider provisions requiring mandatory drug tests for parolees. We have indicated we are not opposed in principle to such tests provided the Congress gives us the resources to do so. It would appear, however, that drug testing of all persons on parole would not be an efficient allocation of our supervisory resources. The Parole Commission has informed me that only about 25 percent of federal parolees have a history of drug involvement. It is my understanding that the Parole Commission imposes a drug testing condition whenever the situation warrants it. For most of the three out of four parolees with no drug history, administering regular drug tests would appear to be an inappropriate and unjustifiably expensive use of federal personnel resources.

My initial reaction to lifetime financial reporting requirements for convicted drug dealers is that such reports would be cumbersome and unnecessary. The best way to deprive a drug dealer of the fruits of his or her crime is by aggressive use of criminal and civil forfeiture statutes. To the extent that a requirement to submit financial information is intended to spotlight drug dealers who are now generating new income other than that already forfeited from the crimes for which they have been convicted -- in essence requiring them to report all income and presumably its source -- such a provision might raise self incrimination problems under the Fifth Amendment.

Question No. 5 from Senator Grassley

What about further tightening of penalties for selling to minors or for using minors to sell drugs -- say, something like a mandatory ten years for the first offense and life without parole for the second offense?

I believe that the current penalty structure is adequate for offenses involving minors in the distribution of controlled substances. Two sections of the Controlled Substances Act specifically address violations involving minors -- either distribution to minors or using minors to violate the controlled substances laws. Section 845 of title 21, United States Code, currently provides that distribution of a controlled substance to a person under twenty-one years of age is punishable in the case of a first offense by twice the penalty otherwise authorized for a distribution offense and in the case of a subsequent offense by three times the penalty otherwise authorized. In addition, section 845 establishes a mandatory minimum one-year sentence if a greater minimum is not otherwise provided for the underlying offense. Section 845b of title 21, United States Code, which was enacted in late 1986, establishes the same double or triple penalties for knowingly and intentionally employing, using, or inducing a person under eighteen years of age to violate a provision of the controlled substances laws or to assist in avoiding detection or apprehension for such a violation. Like section 845, it establishes a one-year mandatory minimum prison term unless the underlying violation would be subject to a higher minimum. Finally, section 845b authorizes an additional five-year sentence if the child used in the offense was fourteen years of age or younger or if a controlled substance was provided to the minor in connection with the offense of using him to violate the controlled substances laws.

Because these provisions establish penalties of twice or three times those applicable to the underlying offense, the maximum penalties are substantial. For example, distribution of five grams of a mixture or substance containing "crack" (cocaine base) to a minor would authorize a prison term of up to 80 years for a first offense. In addition, the underlying offense provides a five-year mandatory minimum prison term. Following release from prison a mandatory term of at least eight years of supervised release would ensue. Even in the case of a violation involving a controlled substance not subject to the enhanced penalties of 21 U.S.C. §841(b)(1)(A) and (B) (providing mandatory minimum prison terms for specified quantities of certain controlled substances), the sentences for offenses involving minors can be quite high. For example using a minor to distribute marihuana in any amount would result in a sentence of up to 40 years for a first offense, with a mandatory minimum one-year prison term, and a mandatory term of at least six years of supervised release.

The United States Sentencing Commission has provided in the sentencing guidelines for enhanced penalties for offenses involving minors. However, the guideline sentences in general do not reach the applicable statutory maxima. To the extent experience under the guidelines shows that higher sentences are needed to deter and properly to punish crimes involving minors, the sentencing guideline amendment process would in my view serve as an appropriate mechanism to bring about higher sentences. Use of the guideline system rather than higher mandatory minimum sentencing provisions would also avoid the problem of a potential acquittal by a jury reluctant to bring about a substantial mandatory prison sentence in an unusual case. In addition, use of the guideline process to enhance sentences would be in keeping with the goals of the Sentencing Reform Act and the Sentencing Commission, the fate of which the Supreme Court is scheduled to decide in the next term. In light of the substantial sentences now authorized under current law and the possibility of using the sentencing guideline amendment process to provide higher sentences, I believe that a new mandatory ten-year sentence for offenses involving minors is unnecessary at the present time.

Question No. 6 from Senator Grassley

What about increasing the penalties for juveniles who deal in drugs? Should we hold their parents responsible to some extent?

I do not believe it appropriate to establish higher penalties for juveniles who deal in drugs than for adults. In general, juveniles are not subject to criminal prosecution but rather to delinquency proceedings. However, Congress has carved out an exception for drug and certain other offenses. The law authorizes criminal prosecution for juveniles alleged to have committed drug trafficking felonies after their fifteenth birthday upon a district court finding that such proceedings would be in the interest of justice. 18 U.S.C. §5032. To reject the general view that the criminal law should grant special protection to juveniles and to adopt a position that the law should treat them more harshly than adults who commit the same crime would in my view constitute an unwarranted departure from past practice. Moreover, given the substantial penalty increases enacted less than two years ago by the Anti-Drug Abuse Act of 1986, increased sentences for juveniles are simply unnecessary.

As to the second part of the question, to the extent that a parent aids and abets a criminal act by a child, the law already covers such conduct and would treat the parent as a principal in the offense. Conspiracies between a parent and child to commit controlled substance offenses are also subject to criminal sanctions. Beyond the current reach of the criminal law, I do not believe that a parent should be held criminally responsible for the criminal acts of a child.

Question No. 1 from Senator Kennedy

1. According to most estimates, 75 percent of our Federal drug enforcement dollars is devoted to efforts aimed at the supply side of the drug equation and only 25 percent of the drug budget is aimed at efforts to reduce the demand for drugs. Drug enforcement legislation pending in Congress with bipartisan support would shift this ratio significantly. Do you agree with the prevailing view in Congress that the current distribution of Federal drug dollars between supply and demand is inadequate?

ANSWER: I agree that reducing the demand for drugs should be a top priority in the national "war on drugs." The Federal government can and should play a critical role in the demand reduction effort, particularly in terms of creating model programs and providing leadership, training, and technical assistance for state and local programs. Additional funding in the demand reduction area, however, must not be at the expense of the Federal government's overarching responsibility on the supply side for addressing interstate and international drug enforcement problems.

Question No. 2 from Senator Kennedy

2. Local law enforcement agencies have had considerable success in efforts to attack the drug problem through intensive crackdowns on street crime in drug infested neighborhoods. Where successful, these programs eliminate street drug sales in targeted neighborhoods, reduce the rate of drug-related crimes such as burglary and robbery, isolate new drug networks and increase the numbers of drug addicts willing to seek treatment. How can the Justice Department work with local jurisdictions to bring pressure to bear upon street level drug distributors?

ANSWER: The cooperative program between state, local and federal law enforcement officials that I found most effective as United States Attorney for the Eastern District of Pennsylvania was the Neighborhood Drug Dealers' Project (NDDP). The need for this project arose during late 1985, when the City of Philadelphia experienced a significant increase in the nature and quantity of street-level cocaine sales in a primarily residential section of the city known as Hunting Park. These open and concentrated sales virtually immobilized portions of the Hunting Park neighborhood, centering on the intersection of 8th and Butler, where dozens of drug sellers approached automobiles touting their wares twenty-four hours per day. Normal family life in the area became nearly impossible as children too young to attend school began, at play, to mimic the drug sellers' sales pitches.

Because of the nature of their controlling laws, local law enforcement officials provided no deterrence, as these increasingly sophisticated organizations employed juveniles and young adults with no previous criminal records pooled their resources into bail funds so that sellers arrested by local police often returned to their sales within hours of their arrests. When finally brought to trial, most escaped with minimal jail sentences or none at all. The federal criminal statutes governing bail and sentencing offered Philadelphia an option in combatting the drug dealers. Thus, in January 1986, in response to this increasing problem in the community, a meeting was held among the heads of various federal and local law enforcement agencies under the guidance and initiative of the United States Attorney's Office for the Eastern District of Pennsylvania. This meeting resulted in the formation of the Neighborhood Drug Dealers Project (NDDP), a coordinated federal-state operation conducted under the auspices of the President's Organized Crime Drug Enforcement Task Force (OCDETF).

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In my view, the success of the Philadelphia Neighborhood Drug Dealers' Project can easily be transferred to other United States Attorney's Offices throughout the country. As Assistant Attorney General for the Criminal Division, I would work to ensure that my experience in Philadelphia is shared with United States Attorneys so they may consider developing a coordinated federal, state and local approach to the very serious drug problem this country faces today.

Question No. 3 from Senator Kennedy

3. In a letter dated June 29, 1988, I requested that you conduct an inquiry and furnish me with a report by July 25 concerning some very troubling allegations regarding potential violations of Rule 6 of the Federal Rules of Criminal Procedure governing grand jury secrecy. Specifically, I requested an assessment of the accuracy of the allegations and, if they were deemed accurate, a description of the steps the Department would take to ensure that similar abuses do not occur in the future. What is the status of your investigation? What steps does the Criminal Division take to ensure that grand jury secrecy is preserved?

ANSWER: Attached please find a copy, with enclosures, of my July 29, 1988 letter to Senator Biden concerning the grand jury secrecy matter to which you refer. I believe that the letter answers all of your questions but the last, which asks what steps the Criminal Division takes to ensure that grand jury secrecy is preserved. The Criminal Division is aware that grand jury secrecy lies at the core of our Federal criminal justice system. Through training, education and regulation, the Division attempts to ensure that those of its employees with access to grand jury material fully appreciate the importance of keeping that material secret.

U.S. Department of Justice
Criminal Division

Office of the Assistant Attorney General
Washington, D.C. 20530

JUL 29 1988

Honorable Joseph R. Biden, Jr.
Chairman
Senate Committee on the Judiciary
Washington, D.C. 20510

Dear Senator Biden:

With regard to the inquiry by Members of the Senate Judiciary Committee concerning the Richard Hirschfeld matter, as you know, Mr. Jerris Leonard, the Attorney for Richard Hirschfeld, has written to me and Members of the Senate Judiciary Committee alleging prosecutorial misconduct in connection with a criminal investigation of Mr. Hirschfeld. In his letters, Mr. Leonard accuses the United States Attorney's Office for the Eastern District of Virginia of violating Rule 6(E) of the Federal Rules of Criminal Procedure which Rule prescribes the secrecy requirements relative to Grand Jury investigations.

Upon receiving Mr. Leonard's letter, I immediately referred the matter to the Department of Justice's Office of Professional Responsibility ("OPR") for investigation. Thereafter, I spoke with Henry Hudson, the United States Attorney for the Eastern District of Virginia, who believed that Mr. Leonard's accusations were groundless and who welcomed any inquiry by the Office of Professional Responsibility.

Since that time, Michael E. Shaheen, Jr., Counsel for the Office of Professional Responsibility, has responded, in a letter dated July 18, 1988, to several inquiries by Members of the Senate Judiciary Committee concerning the status of OPR's inquiry. After being contacted by my Special Counsel, Ronald K. Noble, in connection with the Senators' most recent inquiry, Mr. Shaheen advised me by letter dated July 28, 1988, that the status of his office's inquiry remains unchanged from that set forth in his letter to you dated July 18, 1988 (see enclosures).

As far as the underlying Grand Jury investigation to which Mr. Leonard refers in his letters is concerned, under Rule 6(E) I am not at liberty to confirm or deny that a Grand Jury investigation of Mr. Hirschfeld is in fact being conducted. Nor am I permitted to discuss the subject matter of any Grand Jury investigation under the present circumstances. I may, however, state that Mr. Leonard has been in contact with the United States Attorney's Office for the Eastern District of Virginia, and I am confident that Mr. Hudson will give him every consideration based on the merits of his position. In addition, Mr. Leonard has the option of pursuing his allegations in the United States District Court for the Eastern District of Virginia since his letters raise a legal controversy which can be decided by a court.

In closing, I am confident that the review afforded Mr. Leonard's complaint by the Office of Professional Responsibility, the United States Attorney's Office for the Eastern District of Virginia and the United States District Court for the Eastern District of Virginia will be adequate to safeguard any rights that Mr. Leonard believes have been infringed.

Very truly yours,

Edward S.G. Dennis, Jr.
Edward S.G. Dennis, Jr.
Acting Assistant Attorney General

Enclosures

cc: Honorable Orrin G. Hatch
Honorable Arlen Specter
Honorable Strom Thurmond

Memorandum

Subject

Assistant United States Attorney
Susan L. Watt

Date

JUL 28 1988

To

Edward S.G. Dennis, Jr.
Acting Assistant Attorney General
Criminal Division

From

Michael E. Shaheen Jr.
Counsel
Office of Professional
Responsibility

In accordance with Ron Noble's July 28, 1988, request to Assistant Counsel David Bobzien, we are enclosing additional carbon copies of the replies we sent to Senators Hatch, Kennedy and Specter on July 14, 1988, relating to their concerns about certain aspects of the investigations involving Mr. Richard Hirschfeld.

The status of our inquiry has not changed. We are still awaiting the receipt of additional information which the complainant, Mr. Jerris Leonard, promised to provide us.

Memorandum

Subject	Date
Assistant United States Attorney Susan L. Watt	JUL 28 1988

To	From
Edward S.G. Dennis, Jr. Acting Assistant Attorney General Criminal Division	Signed Michael E. Shaheen, Jr. Michael E. Shaheen Jr. Counsel Office of Professional Responsibility

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U.S. Department of Justice

Office of Professional Responsibility

Washington, D.C. 20530

JUL 14 1988

Honorable Arlen Specter
United States Senate
Washington, D.C. 20510

Dear Senator Specter:

This is in reply to your letter to Acting Assistant Attorney General Edward S.G. Dennis, Jr., dated June 29, 1988, in which you made known your concerns about certain aspects of the investigations involving Mr. Richard Hirschfeld. These matters were brought to your attention by Mr. Jerris Leonard, who furnished to you a letter from former University of Virginia Law School professor Stephen A. Saltzburg to Mr. Judah Best.

Please be advised that our Office currently has this matter under review. We have been in contact with Mr. Leonard and are awaiting the receipt of additional information he has promised to provide us. We will advise you of the final outcome of this matter.

Sincerely,

Signed: Michael E. Shaheen, Jr.

Michael E. Shaheen Jr.
Counsel

cc: Edward S.G. Dennis, Jr.
Acting Assistant Attorney General

bcc: Executive Secretariat
X8062308087

U.S. Depart [illegible] of Justice

Office of Professional Responsibility

Washington, D.C. 20530

JUL 1 4 1988

Honorable Edward M. Kennedy
United States Senate
Washington, D.C. 20510

Dear Senator Kennedy:

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Sincerely,

Signed: Michael E. Shaheen, Jr.

Michael E. Shaheen Jr.
Counsel

cc: Edward S.G. Dennis, Jr.
Acting Assistant Attorney General

bcc: Executive Secretariat
X8070108347

U.S. Department of Justice

Office of Professional Responsibility

Washington, D.C. 20530

JUL 14 1988

Honorable Orrin G. Hatch
United States Senate
Washington, D.C. 20510

Dear Senator Hatch:

This is in reply to your letter to Acting Assistant Attorney General Edward S.G. Dennis, Jr., dated June 29, 1988, in which you made known your concerns about certain aspects of the investigations involving Mr. Richard Hirschfeld. These matters were brought to your attention by Mr. Jerris Leonard, who furnished to you a letter from former University of Virginia Law School professor Stephen A. Saltzburg to Mr. Judah Best.

Please be advised that our Office currently has this matter under review. We have been in contact with Mr. Leonard and are awaiting the receipt of additional information he has promised to provide us. We will advise you of the final outcome of this matter.

Sincerely,

Signed: Michael E. Shaheen, Jr.

Michael E. Shaheen Jr.
Counsel

cc: Edward S.G. Dennis, Jr.
Acting Assistant Attorney General

bcc: Executive Secretariat
X8062408138

JERRIS LEONARD
ATTORNEY AT LAW
1050 THOMAS JEFFERSON STREET, N.W.
SIXTH FLOOR
WASHINGTON, D.C. 20007
(202) 965-6190 FAX: (202) 337-8940

COPY FOR YOUR INFORMATION

June 9, 1988

Honorable Joseph R. Biden, Jr., Chairman
Committee on the Judiciary
United States Senate
489 Senate Russell Office Building
Washington, D.C. 20510

Dear Senator Biden:

The recent television and newspaper publicity surrounding the Attorney General's appointment of Professor Stephen Saltzburg to a top post in the Criminal Division prompts this correspondence to you.

Enclosed you will find a letter which, rather ironically, was written by Mr. Saltzburg courageously casting a scathing attack on the Department while he was still a member of the private sector. I knew Mr. Saltzburg as a University of Virginia Law School professor and am familiar with his national reputation for impeccable and uncompromising integrity. You will certainly find his condemnation of scandalous activities most disturbing; and I can personally corroborate some of them and attest to many others in this matter, as well.

As a former Assistant Attorney General who headed the Civil Rights Division, I am confident that when the confirmation hearings convene for the new Justice Department appointees, the Senate Judiciary Committee will feel compelled to inquire as to what safeguards, if any, are being initiated to prevent such awful abuses within the system.

Most respectfully,

Jerris Leonard

Jerris Leonard

JL/ch

Enclosure

cc: Sen. Strom Thurmond
Sen. Edward M. Kennedy
Sen. Robert C. Byrd
Sen. Howard M. Metzenbaum
Sen. Dennis DeConcini
Sen. Patrick J. Leahy
Sen. Howell Heflin
Sen. Paul Simon
Sen. Orrin G. Hatch
Sen. Alan K. Simpson
Sen. Charles E. Grassley
Sen. Arlen Specter
Sen. Gordon J. Humphrey
Edward S.G. Dennis, Jr., Esq.
John C. Keeney, Esq.
Henry Hudson, Esq.
Stephen A. Saltzburg, Esq.
Virginia State Bar Association

Senator **Heflin**. I call Mr. Paul E. Atkinson of Philadelphia, PA, as a witness.

Mr. Atkinson, will you raise your right hand? Do you solemnly swear that the testimony that you will give before this hearing will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. **Atkinson**. Yes, sir.

Senator **Heflin**. You may make what statement you would like to.

TESTIMONY OF PAUL E. ATKINSON, OF PHILADELPHIA, PA

Mr. **Atkinson**. I have a short written statement, Mr. Chairman. I think the best thing to do is just read it, if that makes good sense.

Senator **Heflin**. Well, we would like you to summarize it. I have read your statement, and you speak in generalities rather than in specificities, just other than the information.

Mr. **Atkinson**. All the information, of course, has been given to your staff. All of the information is available in the hands of your staff people. We can supply whatever documents are necessary to identify the factual background for this thing.

Senator **Heflin**. You have 5 minutes to do whatever you would like to, sir.

Mr. **Atkinson**. Well, my name is Paul Atkinson. I retired in 1977 from Sun Shipbuilding and Dry Dock Company of Chester, PA, one of the Nation's largest private shipyards, after some 36 years of employment, the last 16 as president.

My purpose here today is to oppose the nomination of Edward Dennis as Assistant Attorney General in charge of the Criminal Division. My reasons are three:

Number one, obstruction of justice. The Philadelphia U.S. Attorney's Office, under Mr. Dennis, acted to obstruct justice in a certain SEC/Sun Company matter. The office accepted false information from the very SEC people alleged to have committed serious criminal acts. Some 50 attempts, 50 attempts over a 2-month period to correct this obvious factual distortion, including some half a dozen directly to Mr. Dennis himself, were simply stonewalled. The tedious and time-consuming Freedom of Information Act and Privacy Act route through Department of Justice itself has now yielded, some 3 years later, agreement that the information on which the office had clearly acted was, indeed, bogus and should be purged from the record.

I hold with those who believe that any U.S. citizen who thinks the law has been broken should be able to obtain an audience with a representative of the Department of Justice. This was not the case in this instance.

Number two, false information. The office then repeatedly disseminated false and misleading information about their and my actions. Meetings with prosecutors that never occurred were solemnly identified. Phantom FBI investigations were cited. False information was supplied to congressional staffers and others seeking to review this matter. A major disinformation campaign to make matters seem to be what they were not was energized. Much of this has now been corrected by the Department of Justice itself through amendments forced under the Privacy Act. Others can be corrected if required.

Number three, Dennis' knowledge. Feedback from the committee staff indicates that Mr. Dennis professes that he had no knowledge of any of this. Mr. Dennis chose not to meet and discuss this startling new disclosure last week. Following the events involving the Philadelphia U.S. Attorney's Office identified above, this matter was appealed through several levels of the Department in Washington, culminating in a 21-month investigation by the Office of Professional Responsibility. This review included a field trip to Philadelphia.

When the Department of Justice and SEC Privacy Act officers finally agreed that the bogus facts should be purged from the record, I wrote to Mr. Dennis on 9/25/87, identifying these facts and requesting that the entire matter be reopened. Several follow-up telephone calls to the Philadelphia office were made. The letter was simply not answered, and the four phone calls were never returned.

The matter at hand involved serious criminal allegations against the largest company in the Philadelphia area. This company has long been an important contributor to the Republican Party. Considering these circumstances, Mr. Dennis' assertion that he has no knowledge of this matter is just not credible. If, indeed, he has no knowledge of the matter, his managerial competence and sensitivity to reality are clearly inadequate.

For the above reasons, I am opposed to Mr. Dennis' nomination and hope that the Senate will see fit not to confirm him.

Senator **Heflin**. Mr. Atkinson, you hold that those who believe that any U.S. citizen who thinks the law has been broken should be able to obtain an audience with a representative of the Department of Justice. That is not the case in this instance. You were never able to talk to an Assistant Attorney General or any person there?

Mr. **Atkinson**. That is correct, although I tried some 50 times. I had a meeting with the FBI and asked them about this: Why can't I see these people? And this was the problem. The FBI agreed that they are the right people to see; go and see them.

Senator **Heflin**. Well, you did talk to the FBI.

Mr. **Atkinson**. I talked to them, and I am sure their notes of the meeting will say exactly that.

I recognize, Mr. Chairman, the implications of what I am talking about are extreme. It is all well documented.

Senator **Heflin**. You say that you had four phone calls that were made to the Philadelphia office that were not returned. To whom did you make these phone calls?

Mr. **Atkinson**. I do not remember the assistant U.S. attorney's name, but it was whoever was the assistant U.S. attorney that had jurisdiction over this particular letter.

I can get you that. I have a note of that somewhere, but I do not have it right at this moment.

Senator **Heflin**. You did not phone Mr. Dennis?

Mr. **Atkinson**. No. I did previously, and the previous, fruitless kind of thing that I am talking about here in January and December—I guess it was 1983 or 1984. I think you will find all of that is documented and all of that is on the record. After I attempted to do that, of course, I wrote a letter confirming every step of the way.

Senator HEFLIN. Have you submitted to the committee staff the information you obtained under the Freedom of Information Act relative to what you contend was false information?

Mr. ATKINSON. Yes, I have. To that gentleman right behind you there, Mr. LeGrand.

Senator HEFLIN. Do you have some questions?

Senator THURMOND. Just one statement.

Mr. Atkinson, I believe that your complaints were started in 1983; is that correct?

Mr. ATKINSON. Oh, I think earlier than that, Senator. They extend at least back to 1983.

Senator THURMOND. Your complaints have been investigated or reviewed, as I understand it, by the Securities and Exchange Commission.

Mr. ATKINSON. I do not think they were properly reviewed at all.

Senator THURMOND. Well, but they were reviewed, I mean.

Mr. ATKINSON. Well, alleged to be reviewed.

Senator THURMOND. And the U.S. Attorney's Office in Philadelphia?

Mr. ATKINSON. That is correct.

Senator THURMOND. And the Department of Justice?

Mr. ATKINSON. That is correct.

Senator THURMOND. And all of them have found your allegations to be without merit?

Mr. ATKINSON. Well, the U.S. Attorney's Office in Philadelphia, for example, the fellow who talked with the SEC, the AUSA fellow in Philadelphia that talked with the SEC representative, was filled with a lot of hocus-pocus that now the Department of Justice themselves have changed around, and they have found that these particular facts that they were talking about at that time were, indeed, not true.

Senator THURMOND. I believe Congressman Dingell's committee looked into it, too, didn't it?

Mr. ATKINSON. They are still looking into it, as far as I know.

Senator THURMOND. No information has come to my attention concerning these complaints that I feel adversely reflected on Mr. Dennis. So I do not think I have any questions. Thank you very much.

Senator HEFLIN. Would you say that your complaints are more against an assistant U.S. attorney by the name of Glazer than they are against Mr. Dennis?

Mr. ATKINSON. Mr. Chairman, I hold with those who believe that any U.S. citizen who thinks the law has been broken should be able to obtain an audience with a representative of the Department of Justice. I wrote to William French Smith, the previous Attorney General, and sought an audience with all of those people outside of Philadelphia, after going through this 50 telephone call and writing letters bit. And at that point, I was refused an audience to talk about the subject matter.

It would seem to me that this kind of subject matter is of extreme importance. I heard all kinds of talk here this morning about drugs, which undoubtedly represent a major problem. But one of the major problems is integrity in the Justice Department. It extends to all parts of the Justice Department, in my opinion. The Freedom of Information Act, the handling of the Freedom of Information Act in the Justice Department is not good at all compared with every other department in the Government. The same thing is true of the FBI. Making amendments under the Privacy Act is more difficult than it need be.

Senator HEFLIN. Is it true that you referred your complaints to the Fraud Section of the Department of Justice and to the Securities and Exchange Commission headquarters here in Washington, and that neither of those agencies have taken any action?

Mr. ATKINSON. I think I have referred it anywhere. I have gone to the Senate Select Committee on Ethics, your committee, and I have suggested that they investigate what is happening with Senator Specter in this whole picture. One cannot see a 6-year sort of thing where you cannot talk to the Justice Department people and understand the facts, and then finally later you find out that the facts are, indeed, as I said they were in the beginning, and 3 years have gone by. We have the problem, of course, of the statute of limitations.

Senator HEFLIN. Have you talked to any staff members of the Ethics Committee?

Mr. ATKINSON. Sure.

Senator HEFLIN. You have?

Mr. ATKINSON. Yes.

Senator HEFLIN. They talked to you?

Mr. ATKINSON. Yes, yes. They have a full picture of all of this.

[The following information was subsequently supplied for the record:]

PAUL E. ATKINSON
119 PINE STREET
PHILA. PA 19106

February 24, 1982

Robert G. Dunlop
R. Anderson Pew
Robert I. Smith
The Glenmede Trust Company
229 South 18th St.
Philadelphia, PA 19103

Gentlemen:

Please refer to my letter of December 16, 1981 suggesting among other things that a more open and forthright policy of disclosure be adopted by Sun.

Press reports indicate that a sale of the assets of Sun Ship Inc. has now been concluded. The terms and conditions have not been disclosed. I am not aware of the considerations dictating this clandestine approach to a normal business transaction, but I find myself seriously disturbed by the possible implications.

In October, 1981 Riverfront Development Corporation (with Sun in the forefront) was launched with the usual hoopla to further economic growth of the riverfront area. I wrote to Clarence Moll (CEO of Riverfront) on October 30, 1981 expressing my astonishment at Sun's odd unwillingness to sell the yard to anyone. Sun immediately thereafter (according to press reports) started negotiations with Levingston and apparently reached the deal that was reported last week.

The book value of the yard assets a few years ago was in the 90 million dollar ballpark. Sun people indicated last year that this had been written down to $10 million. Since the fair market value of the floating assets alone was $30-50 million (Todd had recently invested $40 million for a smaller dock in Galveston, Avondale was contemplating $50 million for a new dock in New Orleans, etc.) this seemed strange on its face. A look at the other components of the enormous $236 million one time writeoff indicated similar problems. Correspondence with the Audit Committee of the Sun Board aiming at understanding the situation yielded nothing substantive except that they, the management, the outside auditors, etc. had reviewed the whole matter and it was okay. After several rounds of correspondence, Mr. Walsh (Sun's General Counsel) in his letter of May 18, 1981 finally disclosed the components of this huge writeoff as follows:

> "This loss is a combination of several components including the following:
>
> Writedown of property, plant and equipment to those assets required in the ship repair, conversion and industrial products business
>
> Cost of developing the expanded ship repair and industrial products business
>
> Fees and other administrative expenses associated with the subcontracting of a portion of the backlog
>
> Costs associated with the additional termination benefits provided to represented and non-represented employees, and other social costs incurred as a result of our efforts to ameliorate the impact of our business decision on the surrounding communities."

The first item, of course, is the "strange" one referred to earlier in this letter. The second would properly seem to be overhead expense, but in any event cannot be more than $1 million at most. Why the third item belongs in this one time category instead of the normal cost of ongoing operations is difficult to understand, but in any event it too is a minor item. The last item is a genuine one and is difficult to estimate. Perhaps the best way to get a handle on the magnitude of termination benefits would be to look at the actual benefits negotiated with the represented people. From last week's press reports this would seem to be less than $3 million. $10 million or so would seem to cover the social cost but obviously this is dependent on what's done.

The upshot of all this is that I am unable to account for some $180 million of this one time cost. Perhaps there are some other factors, or some situation not normal in the shipbuilding industry exists.

Obviously an active imagination can reach many conclusions in this whole situation. Under the circumstances it would seem to be in everyone's best interest to dispel the shroud of secrecy hanging over the whole matter. I would again urge that the present Sun Company policy regarding disclosures be re-examined to the end that a more open and forthright approach be adopted.

Very truly yours,

Paul E. Atkinson

Paul E. Atkinson

PEA/ms

PAUL E. ATKINSON
116 PINE STREET
PHILA. PA 19106

November 15, 1983

United States Attorney
601 Market Street
Philadelphia, PA

Dear Sir:

Please refer to my letter of November 3, 1983 to Glenmede Trust concerning the Sun Company stock manipulation matter, a copy of which was sent to your office. In view of my conversation with your Mr. Glazer last week, it is probably in order to review the history of this matter to the end that the reasons for my feeling that this may be a criminal matter rather than a civil matter are clear.

The chain of events in my dealings with Sun and Glenmede on this matter is laid out in the enclosed self-explanatory correspondence. There is also enclosed financial data showing the actual price of Sun stock in 1981, the pertinent provisions of the Sun Performance Share Plan that paid out in 1982, and tabular material showing the holdings and changes in holdings in institutional ownership of Sun stock in the pertinent period.

With respect to motive for what looks like stock manipulation in late 1981, one can only speculate. It would seem probable that peer pressure resulting against those perceived as responsible for the worthless $48.00 stock options awarded early in the year must have built strongly over the summer of 1981. Undoubtedly, the $31.00 option awarded during the summer aggravated the situation. In view of the widespread and substantial holdings of units in another exec. comp. program dependent for their value on the stock price in November/December of 81, this pressure probably became more severe as the year went on. This force was probably much stronger than the incentive of those involved to feather their own nest although this latter is not at all insignificant. Whatever the guidelines of the Sun directors were to ensure compliance with the securities laws, it is apparent from the actual stock price that these were not effective.

PAUL E. ATKINSON
118 PINE STREET
PHILA. PA 19106

What the SEC participation in this matter was, if any, I have no idea, but my enclosed file and correspondence with them is self-explanatory although intertwined with the Sun Ship matter which was concurrent. What the significance of Mr. Monahan's referral of the matter to the SEC Division of Market Regulation and the special Sun exemptions from SEC regulations may be, is not clear to me either. In general, I have found the SEC actions as a government law enforcement agency very odd, as you can see from the correspondence. My November 9, 1983 letter to your office lays out similar strange experience with this agency in the Sun Ship matter. Fortunately, I don't believe that this particular topic at this stage will prove to be within their jurisdiction, since the very nature of the matter probably involves willful violations of the most serious nature, which I would presume could be referred to the Department of Justice for appropriate action in any event.

Whether this whole matter will or should be intertwined with the Sun Ship matter detailed in my November 9, 1983 letter is an open question. Obviously, the two matters have some connection. It may also be that the Glenmede Trust Company part in the whole, as Sun's controlling shareholder and policy decision maker should be included.

As you can appreciate the enclosed does not purport to be complete, but has been selected to present the facts that seem important to me. Voluminous material is available. Should you have any questions regarding all or any part of the information, I would be pleased to discuss the subject further.

Sincerely,

Paul E. Atkinson

/dg
Enclosure

GSG:mjg

Subject

DUTY CALL - PAUL ATKINSON

Date

NOVEMBER 16, 1983

To FILE

From GARY S. GLAZER GSG

On November 16, 1983 I spoke with Tom Monahan of the Securities & Exchange Commission (SEC) concerning allegations made in the attached letters by Paul E. Atkinson, former president of Sun Shipbuilding and Dry Dock Company. I received these allegations in the course of being Duty Assistant.

Mr. Monahan told me that based upon several complaints by Mr. Atkinson, the Philadelphia office of the SEC conducted three different investigations. No investigation revealed any reason for further SEC action. Mr. Monahan further advised that during the course of each investigation Atkinson became extremely abusive and demanding and even sued the SEC under FOIA for the release of documents relating to the investigation. This suit was unsuccessful. It is Mr. Monahan's conclusion that Atkinson's allegations are goundless.

Based upon this discussion, I am taking no further action with respect to this matter.

PA:
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☒ Released in full
☐ Withheld in full

Typed: 3/7/84

Paul Atkinson/Sun Company

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Fraud Section
Criminal Division

On February 29, 1984, I received a call from Mr. Nick Nokes, a Staff Assistant to Congresswoman Schroeder, regarding a letter Mr. Paul Atkinson has sent the Judiciary Committee regarding the Sun Company. Mr. Nokes wanted to know the specific allegations and what Justice had done in this matter. I told him I did not have the file in front of me, but I did remember something about the case.

By way of background, Atkinson is a former employee of Sun Company who has alleged that the Sun Company has engaged in fraudulent conduct. Atkinson first took his case to the United States Attorney's Office in Philadelphia, but when they did not establish the existence of any Federal violations, he wrote DOJ asking to meet with someone in Washington. This letter was sent to the Fraud Section and assigned to me. I checked with AUSA Paul Glazer in Philadelphia and he told me that he and other assistants in his office had met with Atkinson, the FBI had interviewed him, and the Securities and Exchange Commission had checked into his allegations on more than one occasion. Mr Glazer sent me a package on this matter which is in the Criminal Division file. No evidence of Federal violations was forthcoming. After reviewing the information supplied by Mr. Glazer, we wrote Mr. Atkinson that a meeting would serve no useful purpose. James Graham, Deputy Section Chief, Fraud Section and John McCullough, Attorney, Fraud Section approved this decision. After receiving our response, Mr. Atkinson apparently wrote the House Judiciary Committee requesting further review of this matter.

consistent with EOUSA

Fwd EOUSA 4/3/85

I gave Mr. Nokes a brief summary of the background and suggested that he should send a Congressional to DOJ for an official response on this matter. I anticipate that such a Congressional will be sent to AAG McConnell and then be referred to us.

Section Chron

113-0

4

PAUL E. ATKINSON
118 PINE STREET
PHILA., PA 19106

November 9, 1983

U.S. Attorney for the Eastern District
of Pennsylvania
601 Market Street
Philadelphia, Pa.

Dear Sir:

Further to my conversation yesterday with your Mr. Glazer, I have outlined below the bare bones of my thinking regarding the Sun Ship matter we discussed.

By way of introduction, I was the President and Chief Executive Officer of Sun Shipbuilding and Drydock Company for some sixteen years from 1961 through 1977 at which time I retired. I have followed shipbuilding industry matters since and particularly have made it my business to remain current on the market values of various marine assets.

Careful review of the facts underlying the Sun Ship fiasco in 1980 has now led me to the conclusion that top Sun Company management has probably perpetrated (successfully so far) one of the greatest scams of the last half of this century. It has involved many areas, millions of dollars, and thousands of people. In the process they appear to have played fast and loose with several federal laws, and callously disregarded the interests of employees and others.

Much of the underlying information is a matter of public record although Sun has been successful to some degree in concealing the really damaging material. Despite a nine month long investigation by the SEC into their financial hijinks, a lawsuit under the Freedom of Information Act seeking this data, and various and sundry other inquiries several of the "smoking gun" items are still under wraps. These are now being sought through other means, and one would expect in an open society that disclosure of these items will ultimately occur.

PAUL E. ATKINSON
118 PINE STREET
PHILA. PA 19106

U. S. Attorney for the Eastern District
of Pennsylvania
Page Two
November 9, 1983

The purpose of this letter is to bring to the attention of the Department of Justice the three specific matters listed below for whatever action they choose to take. Obviously I am of the view that each of these probably involves criminal activity of one kind or another. The scope of the whole and the numbers involved stagger the imagination. These matters are classic examples of the primary importance of white collar cases of this nature affecting the lives of thousands of people in contrast to those that involve a much smaller number.

1. Grossly inept management led to the demise of one of the leading shipbuilding organizations in the United States. False and misleading statements, apparently designed to cover up this lamentable performance and shift the blame to others, was solemnly purported to be true. Probably the most serious instance was the figure fudging to the tune of several hundred million dollars that took place in the 1980 financials, although several other cases can be documented as well.

2. The much publicized sale of the shipyard assets in 1982 does not appear to have been a sale at all, but merely an agency agreement couched in sale terms. The risks and rewards of ownership stayed overwhelmingly with Sun, which also seems to have provided the financial wherewitha for the first year or so of operations. This is important because the circumstances under which employees, communities, etc. negotiated severance, pensions, community balm and other matters were not what Sun purported them to be. Negotiations conducted under this set of circumstances would not seem to have any validity.

3. Following juvenile handling of the enormous figure fudging (and other strange doings) by the Washington SEC group, I approached the local SEC enforcement people. A nine month investigation of Sun's actions resulted. This

U.S. Attorney for the Eastern District
of Pennsylvania
Page Three
November 9, 1983

SEC inquiry was dropped in March of this year without further formal action. At this point I requested information on the inquiry feeling that Sun had again dodged a bullet by one means or another. When no information was forthcoming from the SEC FOIA office, I filed suit in the D. C. Federal District Court. During the course of this lawsuit, substantial information was revealed concerning the nature of the SEC investigation and other matters.*

Despite several inquiries to various SEC administrative heads requesting explanation of the apparent SEC oddities a curtain of darkness has descended and no further information from either the SEC or Sun has been forthcoming. Considering the circumstances cited above, Sun's recent history of transgressions with various governmental agencies (See enclosed letter to Gus Ballard), the SEC reluctance to explain the oddball problems, and other matters I reach the conclusion that something is rotten in Denmark. The responsibilities of the Department of Justice to investigate a situation of this kind seem obvious.

Along the way, several matters perhaps unrelated to the Sun Ship matter have arisen that may or may not be germane to the main thrust of this letter, depending on how all encompassing these matters become. My letter to

---

* Importantly one of the affidavits accompanying the SEC brief indicated that the largest single shipyard asset, the huge floating drydock had not been sold at all, but had been leased. The leasing of this $20 million item rather than its inclusion in the sale of assets purported by Sun obviously changes the whole financial ballgame, and makes a mockery, in retrospect, of Sun's specific vouching for Levingston's financial strength.

PAUL E. ATKINSON
118 PINE STREET
PHILA. PA 19106

U.S. Attorney for the Eastern District
of Pennsylvania
Page Four
November 9, 1983

Glenmede Trust Company of November 3, 1983, a copy of which was sent to the U.S. Attorney, identifies one of these matters.

As indicated earlier the purpose of this letter is to bring to the attention of the Department of Justice certain matters that I consider to be in their bailiwick.

Should any further information be required at this time, I can be reached in the afternoon at 922-7844.

Very truly yours,

Paul E. Atkinson

GSG:mjg

Subject

DUTY CALL - PAUL ATKINSON

Date

NOVEMBER 16, 1983

To FILE

From GARY S. GLAZER GSG

On November 16, 1983 I spoke with Tom Monahan of the Securities & Exchange Commission (SEC) concerning allegations made in the attached letters by Paul E. Atkinson, former president of Sun Shipbuilding and Dry Dock Company. I received these allegations in the course of being Duty Assistant.

~~Mr. Monahan told me that based upon several complaints by Mr. Atkinson, the Philadelphia office of the SEC conducted three different investigations. No investigation revealed any reason for further SEC action. Mr. Monahan further advised that during the course of each investigation, Atkinson became extremely abusive and demanding and even sued the SEC under FOIA for the release of documents relating to the investigation. This suit was unsuccessful. It is Mr. Monahan's conclusion that Atkinson's allegations are goundless.~~

Based upon this discussion, I am taking no further action with respect to this matter.

Purged 8/17/87 By DOJ and SEC

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☐ Released with excisions
☒ Released in full
☐ Withheld in full

Typed: 3/7/84

Paul Atkinson/Sun Company

113-0

Files

Fraud Section
Criminal Division

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By way of background, Atkinson is a former employee of Sun Company who has alleged that the Sun Company has engaged in fraudulent conduct. Atkinson first took his case to the United States Attorney's Office in Philadelphia, but when they did not establish the existence of any Federal violations, he wrote DOJ asking to meet with someone in Washington. This letter was sent to the Fraud Section and assigned to me. I checked with [redacted] the FBI had interviewed him, and the Securities and Exchange Commission had checked into his allegations on more than one occasion. Mr Glazer sent me a package on this matter which is in the Criminal Division file. No evidence of Federal violations was forthcoming. After reviewing the information supplied by Mr. Glazer, we wrote Mr. Atkinson that a meeting would serve no useful purpose. James Graham, Deputy Section Chief, Fraud Section and John McCullough, Attorney, Fraud Section approved this decision. After receiving our response, Mr. Atkinson apparently wrote the House Judiciary Committee requesting further review of this matter.

I gave Mr. Nokes a brief summary of the background and suggested that he should send a Congressional to DOJ for an official response on this matter. I anticipate that such a Congressional will be sent to AAG McConnell and then be referred to us.

Section Chron

113-0

PAUL E. ATKINSON
118 PINE STREET
PHILA. PA 19106

December 5, 1983

U. S. Attorney
601 Market Street
Philadelphia, Pa.

Dear Sir:

This letter is intended to encourage some introspective thinking on the part of those who determine the procedures, priorities, caseloads and various and sundry other matters for the office of the U.S. Attorney for Eastern Pennsylvania. There would seem to be something askew in a law enforcement system that stifles rather than encourages the efforts of ordinary citizens to volunteer information they feel is important to enforcement of criminal law. Described below in some detail are some of the frustrations I encountered in trying to communicate this type of information to your office last week. Hopefully this view from the outside looking in will be helpful.

Two separate and distinct matters, in which I have been involved for some time, are laid out in detail in my letters of November 9, 1983 and November 15, 1983. Both of these involve large numbers of people, millions of dollars, important questions of public policy and complex activities of one of the largest companies in the Philadelphia area. I have set forth serious allegations of probably criminal activity in both of those matters. Presumably whatever action, if any, may turn out to be appropriate in these cases will be taken after careful review of the facts underlying each. This letter does not concern the merit of these matters, but focuses on the preliminary sorting out procedures that are necessary in any cases of this kind to understand the underlying factors at work.

Last week, some weeks after submitting the original data laying out chapter and verse of these two matters, I called your Mr. Glazer volunteering to meet with whoever might have been assigned these matters. Mr. Glazer indicated that he had reviewed the data I had submitted, talked to the local SEC people, and decided to recommend that your office take no action on the case. Further he indicated that no meeting was necessary or possible. I found this latter attitude surprising I particularly thought his decision to talk with the SEC people at this preliminary stage in view of my concern about their part in this whole matter out of order. In any event, he

U.S. Attorney
Page Two
December 5, 1983

indicated that the information I had supplied together with his recommendations would be turned over to Mr. Miller, and suggested that any further discussions I might think appropriate should be with Mr. Miller. I asked to be transferred to Mr. Miller but evidently he was not readily available.

Feeling that this might be a matter for the FBI rather than the U.S. Attorney, I spoke to Agent Hutchinson of the Philadelphia office for an hour or so on these matters and we agreed that the U.S. Attorney was probably the right agency to meet.

I called Mr. Miller, a couple of days later on Thursday, December 1 and was informed that he was not available. I left my number and requested that he call. No call was received.

I called Friday morning and was again told that Mr. Miller was not available and perhaps I might leave my number. I explained my problem that I had been through this before and inquired if some one else might be available. I was transferred to Mr. Rohn's office where the same unavailability, request to leave one's number, etc., took place. I called late in the day and again the same sequence of events occurred. At this point, I requested to be transferred to Mr. Dennis's office where I once again explained my problem. The young lady took my number and assured me that someone would call.

I left my office at 5:30 p.m. on Friday not having received any call.

As indicated earlier, the above saga can give the impression that information from an ordinary citizen is not really welcome particularly if it involves criticism of some other branch of government. Further, when the Department of Justice reviews volunteered material with the other governmental agency involved without understanding what the facts may be, and then reaches the conclusion that this matter is not one for investigation, confidence in our system of justice can be undermined.

PAUL E. ATKINSON
118 PINE STREET
PHILA. PA 19106

U.S. Attorney
Page Three
December 5, 1983

All of us have encountered situations of the type outlined. Despite the unnecessary aggravation, I'm sure that common sense will ultimately prevail, and whatever should be done will be done. The fact remains that the overall picture that emerges is not flattering to the image of the Department of Justice, not constructive for anyone involved, nor is it calculated to improve the quality of life. Whether the department's case load is too high, budget is too low, or some other reason exists, or the handling of the matter from my end is the cause of the problem is probably not important, as all of these can be corrected.

The purpose of this letter as indicated in the opening paragraph is to call attention to these many small matters to the end that they be examined to see if this type of thing really serves any useful purpose.

Very truly yours,

Paul E. Atkinson

PEA:je

PAUL E. ATKINSON
118 PINE STREET
PHILA. PA 19106

January 16, 1984

U. S..Attorney
601 Market Street
Philadelphia, Pa.

Attention: Mr. Dennis

Dear Sir:

My letter of November 9, 1983 laid out in summary form certain irregularities regarding Sun Company that I described as the "greatest scam of the last half of this century." This letter also detailed the reasons for my apprehension over the propriety of the SEC whitewash of certain Sun Company financial hi-jinks after a nine month investigation. In a separate matter my letter of November 15, 1983 set forth chapter and verse of what appears to be a multimillion dollar stock price manipulation scheme.

Several weeks ago I spoke with your Mr. Glazer who rather curtly advised me that he had reviewed the data and had discussed the matter with the local SEC people. Further, he indicated that he had determined that the Department of Justice would take no action regarding the information I had supplied, and in response to my specific request, indicated that no meeting was either warranted or possible.

Not only did I find this abrupt attitude insulting, but I was appalled by the logic that explained away the feathers in the fox's mouth by checking with the fox and then swallowing his assurance that he had nothing to do with the farmer's chickens Obviously, using this same brand of reasoning would result in the Rita Lavelles, the Richard Nixons, the Harrison Williamses, etc., of the world still being trusted public servants.

I then requested an opportunity to meet with whoever had reached such a decision. At this point what seemed to me a rather juvenile charade took place that culminated in the U. S. Attorney's office continuing to avoid the entire issue. This whole fiasco is detailed in my letter to you of December 5, 1983.

Following my return from a vacation over the holidays I called again last week to determine what the situation might be. After several days of encounters with duty officers, protective secretaries, answering machines, etc; leaving my telephone number several times; and receiving no calls back despite assurances to the contrary, I concluded that my ideas of the functions of the Department of Justice were very different from reality. I did learn from your secretary that my December 5, 1983

PAUL E. ATKINSON
119 PINE STREET
PHILA. PA 19106

U. S. Attorney -2- January 16, 1984

letter had been turned over to a Mr. Sheff. (spelling(?)) Not having heard from him, I am at a loss to understand where he fits in this whole puzzle, if at all. Perhaps this will become clear as time goes on.

Regarding the second and separate matter, detailed in my letter of November 15, 1983, involving the multi-million dollar stock manipulation matter I have no idea if this has been caught up in the wash of the first matter, is being actively pursued, is inactive, or has been handled in some other manner. One would suppose that handling citizen complaints regarding enforcement of the laws of the U.S. must be one of the principal reasons for the existence of the U.S. Attorney's office in Philadelphia in the first place. How this mission can be performe without disclosing what the Department is doing about any particular complaint is beyond my understanding.

It is indeed infortunate that there seems to have arisen an adversary relationship over the simple question of whether a meeting to discuss the actual facts as they apply to the enforcement of certain U. S. laws is useful or necessary. One would think if an hour's meeting would help to move the whole matter off dead center it would be worthwhile. I find it incredit that a citizen can't arrange a meeting with his government representatives charged with enforcing the laws when he believes that certain laws have been broken. However, if this is not possible perhaps you would be good enough to give me the name and address of the next step in the chain of command to the end that I can discuss the matter further.

Very truly yours,

Paul E. Atkinson

cc: Senator Specter
Senator Heinz
Congressman Foglietta

PAUL E. ATKINSON
118 PINE STREET
PHILA. PA 19106

January 20, 1984

W. F. Smith, U.S. Attorney General
Department of Justice
Constitution Avenue & 9th Street
Washington, D.C. 20530

Dear Mr. Smith:

This letter seeks your assistance in arranging a simple meeti with a representative of the Justice Department from outside the Philadelphia area. The purpose of the meeting would be to discuss certain irregularities regarding Sun Company.

On November 9, 1983 I sent a several page letter to the U.S. Attorney in Philadelphia describing the problem. I also detailed the reasons for my apprehension over the propriety of an SEC whitewash of certain Sun financial hijinks in 1980. In another matter my letter of November 15, 1983 set forth chapter and verse of what appears to be a multi-million dollar stock price manipulation scheme.

In early December, 1983 and again in mid-January, 1984, I attempted over periods of several days to talk with whoever was the decisionmaker at the U.S. Attorney's Philadelphia office, regarding these matters. These efforts proved fruitless. These juvenile episodes were laid out in my letters of December 5, 1983 and January 16, 1983 to the U.S. Attorney. Despite repeated requests no reply to the December 5 letter has been forthcoming.

At this point, I have concluded that there is no useful purpose in further attempts to discuss the matter at the U.S. Attorney level since even if one were successful in arranging a meeting the probability of an objective review at this stage is remote.

For this reason, I would appreciate your assistance in arranging a meeting to objectively discuss the subject matter.

Very truly yours,

Paul E. Atkinson

PEA:je
cc: Wm. P. Tyson, Director
Executive Office for U.S. Attorneys

D. Lowell Jensen, Assistant Attorney General,
Criminal Division

Edward Dennis, U.S. Attorney, Philadelphia

United States Attorney
Eastern District of Pennsylvania

PHONE: (215) 597-9479

3310 United States Courthouse
Independence Mall West
601 Market Street
Philadelphia, Pennsylvania 19106

GSG:mjg

January 31, 1984

Senator Arlen Spector
Suite 331
Hart Building
Washington, D.C. 20510

Attention: Greg Farrell

Re: Paul Atkinson

Dear Senator Spector:

On the above date, I spoke with Greg Farrell of your office who requested certain information concerning discussions which I had with Mr. Paul Atkinson in Philadelphia.

Based upon complaints made by Mr. Atkinson, I spoke with Thomas Monahan of the Securities & Exchange Commission, who advised me that he had numerous dealings with Mr. Atkinson concerning allegations which were raised in letters to the United States Attorney's Office. Based upon my conversation with Mr. Monahan, a review of the allegations sent in by Mr. Atkinson, a discussion with the Special Agent of the FBI who interviewed Mr. Atkinson, as well as an understanding of the types of cases which we are empowered to investigate, I determined that no further action was necessary by this office. I might add that [redacted] In no case was the information different from what was presented to me, and in each case it was determined that no further action could be taken by this office.

Deleted portion reads "that Mr. Atkinson was not satisfied with my response and did contact other Ass't. U.S. Attorneys in Philadelphia."

I am enclosing a copy of a memorandum to my file, copies of several letters from Mr. Atkinson, as well as a copy of a letter from another Assistant United States Attorney to Mr. Atkinson. I trust that this information will be helpful.

Very truly yours,

Edward S.G. Dennis, Jr.
United States Attorney

Gary S. Glazer
Assistant United States Attorney

Enclosures

United States Attorney
Eastern District of Pennsylvania

PHONE: (215) 597-9479

3310 United States Courthouse
Independence Mall West
601 Market Street
Philadelphia, Pennsylvania 19106

GSG:mjg

January 31, 1984

Senator Arlen Spector
Suite 331
Hart Building
Washington, D.C. 20510

Attention: Greg Farrell

Re: Paul Atkinson

Dear Senator Spector:

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☐ Withheld in full

I am enclosing a copy of a memorandum to my file, copies of several letters from Mr. Atkinson, as well as a copy of a letter from another Assistant United States Attorney to Mr. Atkinson. I trust that this information will be helpful.

Very truly yours,

Edward S.G. Dennis, Jr.
United States Attorney

Gary S. Glazer
Assistant United States Attorney

Enclosures

FOIA PA

COMMITTEES:
JUDICIARY
APPROPRIATIONS
VETERANS' AFFAIRS

United States Senate
WASHINGTON, D.C. 20510

Rec'd 2/21/84

February 13, 1984

Mr. Paul Atkinson
118 Pine Street
Philadelphia, Pennsylvania 19106

Dear Mr. Atkinson:

Thank you for your letters concerning the allegations of mismanagement against Sun Shipbuilding and Dry Dock Company.

Members of my staff have spent considerable time investigating this matter and have discussed the merit and findings of the three previous investigations conducted by the Securities and Exchange Commission (SEC). Based on our review of the findings of the staff principally involved with the investigation of your claims, and our discussion with the SEC and the U.S. Attorney's Office, I am satisfied that the investigation was thorough. Although the SEC was eager to follow up your original statements, they were unsuccessful in revealing any wrong-doing of mismanagement by Sun Shipbuilding and Dry Dock Company.

At this time, I believe it would be inappropriate for me to urge the SEC and the Department of Justice to reconsider their previous decision on this matter.

Sincerely,

Arlen Specter

AS/gf

Subject Mr. Paul A. Atkinson/Sun Company

Date FEB 16 1984

113-0

To Files

From

Fraud Section
Criminal Division

We received the attached letter from Mr. Atkinson asking us for a meeting to discuss his complaints against Sun Company. He does not feel the United States Attorney's Office in Philadelphia has been helpful.

I called Assistant United States Attorney Glazer in Philadelphia, Pennsylvania regarding this matter. [redacted] They found no basis for a criminal investigation. Glazer sent me a copy of various items referring to this matter, which are attached.]

Also, the Securities and Exchange Commission (SEC) has checked these allegations and failed to find evidence of criminality. [In fact, according to Glazer's memo of 11/16/83, Atkinson was abusive to SEC personnel and filed a FOIA suit against SEC which was unsuccessful.]

There has been a congressional on this from Senator Spector and an FBI agent interviewed Atkinson, with whom Glazer has met. The FBI agent also did not determine that there was evidence of a Federal violation.

I suggest that a personal Department of Justice conference would not be useful and wrote a letter to Mr. Atkinson advising him of our decision.

Attachment

Rec'd 2/21/84

SST:RWO:RGC:DKM:dah
113-0

Washington, D.C. 20530

FEB 16 1984

Mr. Paul E. Atkinson
118 Pine Street
Philadelphia, Pennsylvania 19106

Re: Sun Company

Dear Mr. Atkinson:

Your letter, dated January 20, 1984, to Attorney General Smith regarding the above-captioned matter was referred to the Criminal Division for reply.

Our inquiries indicate that your allegations have been evaluated by the Securities and Exchange Commission, the Federal Bureau of Investigation, and several Federal prosecutors. It is our understanding that evidence of a Federal violation was not disclosed. The Department of Justice can assume jurisdiction only where possible violations of Federal law are involved. In view of the foregoing, a personal conference would not appear useful.

You may wish to consult private counsel to determine what rights you may have with regard to the Sun Company.

Sincerely,

Stephen S. Trott
Assistant Attorney General
Criminal Division

By: Robert W Ogren
Robert W. Ogren
Chief, Fraud Section

PAUL E. ATKINSON
118 PINE STREET
PHILA. PA 19106

February 23, 1984

Robert W. Ogren
Chief, Fraud Section
Criminal Division
Department of Justice
Constitution Avenue Between 9th and 10th Streets
Washington, D.C.

Dear Mr. Ogren:

Your letter of February 16, 1984 responding to my January 20, 1984 letter to U.S. Attorney General, William French Smith, has been received. There would seem to be some mistake along the way since your letter does not address the problem to which my letter refers.

My letter does not discuss the facts surrounding certain criminal allegations against Sun Company. It merely recounts my repeated futile efforts to discuss the underlying subject matter with whoever was the decision maker at the U.S. Attorney's Philadelphia office. The letter further requests that a meeting be arranged to discuss the matter objectively with any Department of Justice representative outside the Philadelphia area.

It seems fundamental to the American adversary system of justice that any citizen must have the right (and the duty) to discuss with law enforcement people any instance where he thinks the law has been broken. Abridging this basic right leads to all sorts of problems ranging from citizen cynicism toward their government to crimes of the Watergate variety to erroneous conclusions based on predigested information.

Your letter happens to be a perfect example of the pitfalls posed by reliance on only one point of view. Your letter states, "Our inquiries indicate that your allegations have been evaluated by the Securities and Exchange Commission,

Robert W. Ogren
Page Two
February 23, 1984

the Federal Bureau of Investigation and several Federal prosecutors. It is our understanding that evidence of a Federal violation was not disclosed."

A review of the FBI participation yesterday revealed that the FBI (Agent Hutchinson in Philadelphia office) made no evaluation of any kind, made no finding, and thus has no opinion on whether any Federal law was violated or not. He further knew of no other FBI activity other than his, on this whole matter. It follows that the inclusion of the FBI in your statement is just plain wrong.

The reference to the SEC as a decision maker is shocking in view of my complaint questioning the very propriety of their inquiry. Why they are involved at all, except as their actions add to the factual base, is a mystery to me.

The two basic criminal complaints are set forth in some detail in my letters to the U. S. Attorney of November 9, 1983 and November 15, 1983. These two letters treat separate and distinct matters which are both enormous in scale involving millions of dollars each. The first matter consists of three parts. Only a portion of the first part of the three part matter described in the November 9 letter involves the $236 million item that triggered the SEC inquiry that started more than a year earlier. Why the SEC tail (albeit a large one) is wagging the whole dog in this case is a good question.

Generally the SEC investigation was kept under even more severe wraps than is usually the case with the SEC, covering up several SEC anomalies along the way which have been extensively documented elsewhere. Following the termination of the SEC inquiry in March, 1983, I arm wrestled for several months with the SEC FOIA office, and finally brought a lawsuit in D.C. Federal District Court to compel disclosure. Shortly following the disclosure of the scope and nature of the SEC inquiry and on the basis of substantial other information

PAUL E. ATKINSON
118 PINE STREET
PHILA. PA 19106

indicating things were not as they were purported to be by the SEC and Sun, I asserted the November complaints. For some strange reason, the SEC has been allowed to whitewash their own conduct, while input from me has been denied as cited in some detail in my letter to Mr. W. F. Smith of January 20, 1984.

Under all these circumstances, I'm sure you or any other reasonable person would agree that placing any reliance on the evaluation of my allegations by the SEC is contrary to the basic precepts of the American system of justice.

With respect to evaluation by several Federal prosecutors, I have no way of knowing what took place. One would suppose that review of the massive allegations would require talking to some of the people involved. It is possible that this would happen without my hearing rumblings, but I doubt it. Having heard none, my guess is that the prosecutors' review consisted of nothing more than a look at the file.

It would seem clear that the information on which you evidently based your decision to deny any further review of this matter was at least partially incorrect factually. It follows that the whole matter should be penetrated in some reasonable depth, the true facts ascertained, and appropriate action taken.

There remains the question of who supplied the bogus information and why. This whole ball of wax involves hundreds of millions of dollars, small portions of which have been known to distort the motives of even the most ardent churchgoer. On the other hand, it is also possible that relatively innocent motives are involved. As usually occurs in massive matters of this kind, those involved have problems in keeping the story straight. Some half dozen of these

Robert W. Ogren
Page Four
February 23, 1984

smoking gun type items,like the embroidery of the FBI role cited above,have now surfaced and I'm sure there are many more.

Very truly yours,

Paul E. Atkinson

PEA:je

PAUL E. ATKINSON
118 PINE STREET
PHILA. PA 19106

February 24, 1984

Mr. W. F. Smith
U. S. Attorney General
Department of Justice
Constitution Avenue
Washington, D.C.

Dear Mr. Smith:

My letter of January 20, 1984 cited chapter and verse of the unaccountable denial of access to the criminal justice system by the U.S. Attorney in Philadelphia. The major effort that seems to have been mounted to avoid discussing massive criminal allegations raises all kinds of questions regarding the motives of those involved. A reasonable person can't avoid the presumption that substantial efforts are being made to suppress whatever the facts may be.

Now I am in receipt of a reply from your Mr. Ogren that avoids the entire issue and concludes, using erroneous facts (that easily could have been checked), that no useful purpose would be served in further pursuing certain unspecified allegations. Why any senior Justice Department official would indicate that the Federal Bureau of Investigation had evaluated a particular matter, when the FBI indicates flatly they have not is beyond my comprehension.

The subject matter involves hundreds of millions of dollars and grave allegations concerning the activities of the largest company in the Philadelphia area that has long been associated with the Republican Party. We have now seen bobbing and weaving by the SEC and the local U. S. Attorney, and now senior Justice Department officials are handling the whole matter at least in a clumsy manner. It may be that this matter has now reached the stage where the appointment of a Special Prosecutor is desirable to avoid any perception of possible political influence in this whole matter.

PAUL E. ATKINSON
118 PINE STREET
PHILA. PA 19106

Mr. W. F. Smith
Page Two
February 24,1984

Your comments and/or actions are invited.

Very truly yours,

Paul E. Atkinson

cc: Chairman House Judiciary Committee
Chairman Senate Judiciary Committee
Robert W. Ogren,
Chief Fraud Section, Criminal Division, Dept. of Justice

PAUL E. ATKINSON
118 PINE STREET
PHILA. PA 19106

March 14, 1984

Senator Arlen Specter
Washington, D.C.

Dear Senator Specter:

Your letter of February 13, 1984 regarding certain Sun Company matters has been received. I am puzzled by your presumptions and conclusions which don't square with the facts or my purpose in writing to you.

Regarding this latter, I hold with those who believe that any citizen should be able to meet with law enforcement authorities to discuss any matter where he believes the law has been broken. A system that denies this common sense fundamental for any reason whatsoever needs to be changed. Although I would presume that you would use your good offices in the event of any obvious abuse of the existing laws, my principal purpose in writing to you in the first place is to highlight a situation in which either the existing laws that permit such a situation should be changed or those who administer the laws and permit such a result should be replaced. There never was nor is there any presumption on my part that a U.S. Senator can be expected to judge whether any particular investigation is or is not thorough.

In my view the only purpose of legislative intervention in the whole decision making process of the executive branch is to determine whether the laws are indeed working as they were designed. This seems to me to be the reason underlying Congressional hearings; hence, my call for a Senatorial investigation of the facts of this case, as laid out in my letter to you of January 23, 1984.

On receipt of your letter, I was and am puzzled by your reference to three investigations since to my knowledge there was only one. I accordingly filed a Freedom of Information Act request with the SEC FOIA officer. The facts which I received yesterday show that indeed there was only one investigation of the Sun Ship matter, and your information was just plain wrong.

All of this, together with other anomalous incidents, raise important questions regarding the good faith of some of those involved. There now seems to be emerging an odd pattern of deception punctuated by a disappearing memo, backdating of government files, phantom FBI investigations cited by a senior Justice Department official and now SEC investiga-

PAUL E. ATKINSON
118 PINE STREET
PHILA., PA 19106

Senator Arlen Specter
Page Two
March 14, 1984

tions that apparently never occurred by a U.S. Senator. Who is masterminding this oddball campaign and for what purpose is a good question. Past experience tells us that once embroidery of the true facts of any situation enters the picture things may be very different from what was originally painted.

In view of the many inconsistencies and loose ends that surround this whole matter, I would again call for a full blown Senate investigation of all the facts from ground zero. In addition to the far-reaching justice implications, you will recall I have raised important national defense considerations surrounding the whole matter. It is hardly conceivable that sinister forces are behind this whole episode, but we are not dealing with a paper plate factory. Until the true facts are laid out for all to see, any conclusions reached by anyone are mere speculation.

Very truly yours,

Paul E. Atkinson

PAUL E. ATKINSON
118 PINE STREET
PHILA., PA 19106

April 6, 1984

Stephen S. Trott
Assistant Attorney General
Criminal Division
U.S. Department of Justice
10th & Constitution Avenue
Washington, D.C. 20530

Dear Mr. Trott:

This letter concerns an incredible series of incidents that took place this week culminating in what would seem like an inexplicable lapse of judgment by your Mr. Ogren, Chief of Fraud Section, on April 4, 1984. Should the facts turn out on thorough investigation to be as they appear from here I would suggest that Mr. Ogren be relieved forthwith from the responsible position he holds in the Department of Justice.

In a letter to William French Smith, U.S. Attorney General, dated January 20, 1984, I laid out certain problems I had experienced with the U.S. Attorney's office in Philadelphi Someone, whose initials I cannot decipher, replied for Mr. Smith in a letter dated 2/16/84, signing Mr. Ogren's name, citing among other things phantom FBI "evaluations" that either never occurred or were unconscionably overblown, dependin on one's definition. (The real issue, of course, is substance not semantics). After receiving the letter I immediately reviewed the matter with the local FBI agent involved to make sure that there were no other "evaluations" other than whatever came out of the introductory meeting I had arranged. I then responded to Mr. Ogren in a four page letter identifying the facts as I saw them. This letter also raised the issue of why anyone in the DOJ would use erroneous information when the relevant information could be readily verified.

This week I called Mr. Ogren to discuss the matter, and was advised he was unavailable. The subject matter was referred to Mr. John McCullough who reiterated the same position set forth in the previous Justice Department letter based on the same erroneous facts. After explaining that this was simply retracing the same ground which had been refuted extensively by my 2/23/84 letter, the substance of which had not been addressed by Mr. McCullough, I sought to speak to Mr. Ogren to whom my letter had been sent. He

PAUL E. ATKINSON
118 PINE STREET
PHILA. PA 19106

Stephen S. Trott
Page Two
April 6, 1984

was again unavailable. Repeated efforts to reach Mr. Ogren were not fruitful. Finally, after some half a dozen calls, I was given a message from Mr. Ogren by his secretary Wednesday morning to the effect that I had already received a letter from Mr. Ogren on the subject matter and could expect nothing more.

There followed an Alice in Wonderland tour of the U.S. Justice Department by telephone finally arriving after many stops along the way at your office where a young lady who would not disclose her name at 633-2601, listened to my story, indicated that she would have some one review the matter and get back to me.

As one ponders the oddball actions of all concerned over the last two years the overwhelming characteristic that comes across is an unwillingness on the part of public servants to look at the actual facts. Why there seems to be a strange affinity between law enforcement officials and a large oil company is beyond my comprehension.

Under the circumstances, the number of conflicting statements and inconsistencies, the serious allegations of massive fraud, the multi-million dollar stock manipulation matter, the inordinate secrecy surrounding the whole, the odd actions of certain SEC and DOJ employees (which appear to be aimed at suppressing information rather than searching it out) would seem to demand objective factual review from ground zero to lay to rest once and for all what the real facts may be.

In another vein, Senator Arlen Specter has been involved in this matter for some time. It now develops that his people have also been misled by the SEC regarding certain purported investigations of this matter that apparently either were never conducted or were also overblown. Greg Farrell of Senator Specter's office is again reviewing the facts in light of this latest embroidery.

Obviously, I found the Ogren message less than courteous but more importantly this seemed to me to represent a major lapse of managerial judgment that seriously questions the suitability of Mr. Ogren to occupy his present position.

Stephen S. Trott
Page Three
April 6, 1984

As a matter of public policy any "shoot from the hip" decision involving a several hundred million dollar matter taken by high government officials without thoughtful testing of all the available facts simply is not prudent. This type of judgment reached without hearing both sides of any story violates common sense and will lead inevitably to who knows what kind of abuses.

Whatever the facts ultimately turn out to be it is inconceivable to me that a business firm could exist using the fundamentally flawed judgment displayed in this case. In any organization (particularly the Fraud Section of the U.S. Justice Department) some awareness of the realities of a matter involving several hundred million dollars is essential as well as some common sense assessment of the real motives apt to be involved. Blind backing of subordinates may be considered by some to be admirable, but it carries with it responsibility for assessing the factual situation as it really is.

One of the built-in protections of our system is the appeal process. When a circumstance can exist which allows information from any source to come through an appeal process unexamined while repeated challenges to its authenticity are warded off by the simple expedient of refusing to discuss them, the whole process takes on the characteristics of a Kangaroo Court.

I am not aware of Mr. Ogren's employment status but in view of the grievous lack of judgment displayed in this case he should be replaced forthwith unless some now unidentified factor indicates some overwhelming reason to the contrary. If his billet is a Civil Service slot, there should be an appropriate investigation by the Office of Personnel Management of all the facts surrounding this matter and whatever action that is warranted should be taken.

I would appreciate your comments on this serious matter and your views of the appropriate manner in which to proceed.

Very truly yours,

Paul E. Atkinson

cc:FBI, Phila.
(Att: Agent Hutchinson)
Senator Arlen Specter
Robert W. Ogren
Office of Personnel Management

U.S. Department of Justice

Criminal Division

Deputy Assistant Attorney General

Washington, D.C. 20530

MAY 8 1984

Mr. Paul E. Atkinson
118 Pine Street
Philadelphia, Pennsylvania 19106

Dear Mr. Atkinson:

Mr. Trott has provided me your letter and asked me to look into your allegations. After doing so, I determined that the conduct of Mr. Robert Ogren was proper. There is no further action to be taken on this matter.

Sincerely,

Victoria Toensing

Victoria Toensing
Deputy Assistant Attorney General
Criminal Division

PAUL E. ATKINSON
118 PINE STREET
PHILA. PA 19106

May 15, 1984

Steven S. Trott
Assistant Attorney General
Criminal Division
U. S. Department of Justice
10th & Constitution Avenue
Washington, D. C. 20530

Dear Mr. Trott:

The implications of your Ms. Toensing's letter of May 8, 1984 to me are shocking. The simple fact that lemming like support of the stonewalling of lower level bureaucrats is extended willy nilly by the Criminal Division of the U.S. Department of Justice without any attempt to penetrate the simple facts under dispute gives much substance to my uneasy impression that this whole thing has been managed from on high from the early stages. What the underlying nature behind this strange action may be is anybody's guess.

As you may know, I have asked the Office of Professional Responsibility to look into this whole matter to the end that all be opened to the light of day and whatever action is dictated under law be taken. I am sending them a copy of this letter and Ms. Toensing's of May 8, 1984 for their information.

Very truly yours,

Paul E. Atkinson

cc: Office of Professional Responsibility
Department of Justice - Att: David Bobzien

Senator Arlen Specter - Att: Greg Farrell

Senator John Heinz - Att: Ms. Chizeck

Senate Judiciary Committee - Att: Steve Cannon

HSE JUDICIARY COMM ATT. Dan Freeman

PAUL E. ATKINSON
118 PINE STREET
PHILA. PA 19106

June 15, 1984

Office of Professional Responsibility
U. S. Department of Justice
10th & Constitution Avenue
Washington, D.C.

Attention: Mr. David Bobzien

Dear Mr. Bobzien:

Enclosed are copies of the following documents that you requested at our meeting on Wednesday.

1. Letter to U.S. Attorney dated November 9, 1983 relative to Sun Company exit from shipbuilding.

2. Letter to U.S. Attorney dated November 15, 1983 relative to the Sun stock price manipulation matter.

3. Letter to U.S. Attorney dated December 5, 1983 laying out chapter and verse of efforts to talk with decisionmakers at Philadelphia U.S. Attorney office.

4. Letter to U.S. Attorney dated January 16, 1984 detailing further efforts to talk with decision makers at U.S. Attorney's Philadelphia office.

In addition there are enclosed the following:

5. Correspondence with Congresswoman Schroeder of Colorado setting out my thinking and her view from the bridge.

6. Letter dated April 4, 1983 to Mr. Monahan of Philadelphia enforcement group of SEC concerning the "Keystone Kops Caper".

7. My handwritten notes of telecon with Tam Heckle (Congressman Foglietta's office) re: an internal SEC view of this whole matter. (This document was forwarded to U. S. Attorney in November, 1983 with original Complaint).

8. Correspondence to and from the U.S. Attorney in Philadelphia which represents my only communication from that office except the telephone conversations with Glazer detailed above.

PAUL E. ATKINSON
118 PINE STREET
PHILA. PA 19106

9. Packet of recent correspondence with Glenmede (2nd largest charitable trust in U.S.).

In addition to possible pertinency, most of the foregoing material is to some extent typical of my modus operandi and may perhaps give you a feeling of what else may be available. Should you be interested in specific information in any particular area, please give me a call.

In general, I was most pleased with our meeting in that careful attention was devoted to my presentation, probing and penetrating questions were aimed at important matters, and the entire subject was approached in a serious, businesslike and non-political manner. You will recall that I left with you the flip chart presentation and the material surrounding the "Keystone Kops Caper". I further agreed to furnish you with certain additional material which is itemized in the first paragraph above.

Regarding the broad objectives of this whole matter from my end you will recall my summary of the six outstanding issues as listed below.

1. The original criminal complaint against Sun relating to their exit from shipbuilding.

2. The original criminal complaint against Sun regarding the stock manipulation matter.

3. The facts surrounding what looks like an extensive coverup of the foregoing by all and sundry.

4. The strange SEC behavior and, among other things, substantive answers to the issues raised in my several letters to various SEC authorities.

5. Ditto regarding DOJ, and specifically including the issues itemized in my letters to William French Smith, Ogren, Trott, Shaheen, and the Philadelphia U.S. Attorney that have not been answered.

6. The posture of the DOJ regarding the Freedom of Information Act, as detailed in my letter to you of June 8, 1984.

Office of Professional Responsibility
June 15, 1984
Page Three

Regarding this last item, we agreed that the handling of the FOIA by DOJ was the province of others, and not the Office of Professional Responsibility. However, you did not disagree significantly with my version of the facts pertaining to DOJ handling of the FOIA. I indicated that I would set about to change this situation as a political matter separate and distinct from the other items with which this letter is concerned. I am of the view that timely availability of information to the public would have a marked effect on prosecutorial behavior and specifically decisions. For this reason, this whole matter has important relevance to the matter at hand. However, I agree that our plate is already full, and no useful purpose is served by burdening it further with this problem.

You posed a question regarding the circumstances of my leaving the shipyard and probed what my personal interest might be one way or another depending on Sun's guilt or innocence. I'm not sure that I understand the relevance of such a question to the proper making of prosecutorial type decisions about law enforcement matters. In any event you will recall my reply that my leaving was as normal as it could be, given the fact that my policies that had been and in effect were radically changed by the new Sun management. The fact that these new policies led in three short years to the disaster that later resulted only proves the old adage that shoemakers usually know more about making shoes than computer operators do. Unfortunately, there, there doesn't appear to be any law against poor business judgment, but there is certainly one requiring public companies to come clean with their constituencies.

You will further recall my indicating that a growing group of people were concerned with this whole ball of wax and that we are considering private class actions of one kind or another. I am enclosing recent correspondence to a cross-section of people involved as well as my recent letter to the Sun and Glenmede directors. Hopefully, these should give you a flavor of my thinking and motivations contrary to the innuendoes inherent in the material discussed above.

PAUL E. ATKINSON
118 PINE STREET
PHILA. PA 19106

Office of Professional Responsibility
June 15, 1984
Page Four

All in all, I have the uneasy feeling that may or may not prove correct that the whole "ad hominem" batch of insinuations was dreamed up by the Sun financial and legal staff as a red herring for the benefit of the government prosecutors. Should the DOJ prosecutorial judgment of this whole matter prove to have been even remotely influenced by such flimsy hearsay, the implications are grave. My experience is that this kind of thing usually boomerangs against whoever raised the issue when all the facts are exposed to the light of day. In any event now that someone thinks the matter is relevant I would think that nothing less than a full and complete penetration of all the circumstances is important.

With regard to the FOIA lawsuit, I have asked David Coburn of Short, Klein and Karas to supply you with the principal documents that should allow you to fit this piece of the puzzle into the whole. He will be in touch.

One straightforward way at this point to shortcut all the bookkeeping hocus pocus with which we are presently wrestling would be simply to look at the backup data to the journal vouchers underlying the huge $236 million one time loss reserve. Obviously these should have been the first items sought in any investigation worthy of the name, given the conflict pointed out in my February, 1982 letter which kicked off the whole investigation in the first place. How the DOJ even at this stage can continue to ignore this material which should be readily available eludes me. These would serve the same smoking gun function of quickly ending the factual charade that the famous Watergate tape did.

Indeed, the very lack of pursuing this obvious and simple route may be the most damning part of this whole strange affair.

Very truly yours,

Paul E. Atkinson

PAUL E. ATKINSON
118 PINE STREET .
PHILA. PA 19106

June 25, 1984

Associate Attorney General, D. Lowell Jensen
U.S. Department of Justice
10th & Constitution Avenue
Washington, D.C.

Re: Criminal Complaints Against Sun Co. Nov. 1983

Dear Mr. Jensen:

This letter is directed to you since your responsibilities seem to include direct supervision of the Criminal Division and the Executive Office for U.S. Attorneys, both of which appear to be either active participants or passive dupes in the massive coverup that seems to have enveloped the subject complaints. This whole scam now seems to have most of the elements of a highly rated prime time TV drama including massive stock price manipulation, board room intrigue, political wheeling and dealing, book cooking to the tune of millions, shabby business deals, plant closings, scions of fabulous inherited wealth and other similar characteristics. The full dimensions of this multifaceted story are not yet clear.

As you probably know, the leading Democrats, particularly Senator Hart, Congresswoman Schroeder, and ABC News Commentator Jody Powell, have been outspoken in characterizing the present Justice Department as being the most highly politicized of any since John Mitchell's tenure terminated. I initially attributed their vehemence to their political beliefs. However, after some eight months of first-hand experience that seems right out of Alice in Wonderland, I have now concluded that their views are probably correct.

Following the unmasking of an SEC investigation by compelling disclosure through a Freedom of Information Act lawsuit, criminal complaints of massive fraud were filed against Sun Company last November. There then took place an incredible sequence of whitewashing actions and stonewalling by the Justice Department, the upshot of which turns out to be that they have been able to completely avoid any discussion of these matters despite repeated requests to all and sundry.

At the suggestion of the Senate Judiciary Committee staff in a letter dated April 11, 1984, I laid the facts out to the Office of Professional Responsibility of the Justice Department. After some review, I gather that they have now decided

PAUL E. ATKINSON
118 PINE STREET
PHILA. PA 19106

Associate Attorney General, D. Lowell Jensen
Page Three
June 25, 1984

conclusion might be and where it will lead is anybody's guess.

Your comments and observations are invited, particularly if the factual information or logic is suspect anywhere along the line.

Very truly yours,

Paul E. Atkinson

cc: Attorney General Wm. French Smith
Deputy Attorney General Carol Dinkins
Criminal Division, U.S. Department of Justice
Exec. Office for U.S. Attorneys, U.S. Department of Justice
Office of Professional Responsibility, U.S. Dept. of Justice

PAUL E. ATKINSON
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Associate Attorney General, D. Lowell Jensen
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to penetrate the whole matter in more depth. Since this group apparently was set up in the wake of Watergate specifically to handle the very type of scam that almost certainly appears to be involved here, it will be interesting to see how the process designed by former Attorney General Levy will work under the pressures of a real world political campaign in an election year.

The purpose of this letter is to explore the other side of the coin, the possibility that the Justice Department higher-ups were merely passive pawns instead of active participants in a carefully planned political scheme. To reach this finding one must conclude that the U.S. Attorney in Philadelphia, the Director of the Executive Office for U.S. Attorneys, the Chief, Fraud Section of the Criminal Division, the Assistant Attorney General in charge of the Criminal Division and their various deputies and acolytes were content to passively rubber stamp whatever information they received from subordinates without consideration of what they knew or should have known were disputed facts. One must further conclude that these skilled prosecutors saw nothing strange about the fact that formal complaints about the SEC conduct of an investigation could be resolved by talking to the SEC alone and not those who raised the issue about the very propriety of the SEC investigation. This, of course, is the ultimate in ex parte communications. Finally, one must reach the conclusion that these highly skilled people believed that the issues regarding disappearing memos, backdating of government files, fictitious meetings with prosecutors, phantom FBI evaluations and other items of a similar readily verifiable nature would somehow evaporate.

In addition to all of the foregoing, one must somehow explain away the fact that all of these public servants were unavailable to discuss these matters over several months. This was accomplished by simply refusing to take or return some 40 phone calls, and neither acknowledging nor answering some ten letters pertaining to the subject matter.

All in all, the possibility that all of these high caliber people would act as passive dupes under the circumstances outlined strains the imagination beyond reasonable credibility. It follows that the group probably followed a party line laid down by higher political authority. What the dimensions of this

PAUL E. ATKINSON
118 PINE STREET
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July 19, 1984

Associate Attorney General D. Lowell Jensen
U. S. Department of Justice
10th & Constitution Avenue
Washington, D.C.

Dear Mr. Jensen:

My letter of June 25, 1984 indicated that certain complaints involving massive fraud by Sun Company seemed to be enveloped in a widespread and systematic coverup operation by the Department of Justice. Further, the point was made that your own people charged with looking at these matters had decided to investigate the whole ball of wax. Several weeks have now gone by with neither acknowledgement nor reply to what seems to me to be incendiary material. As a consequence I have become concerned that my letter may have gone astray in the mail. In this event another copy is enclosed for your information.

Your comments on the underlying facts and logic, particularly if open to question or different interpretations. anywhere along the line, are again invited.

Very truly yours,

Paul E. Atkinson

PEA:je

PAUL E. ATKINSON
118 PINE STREET,
PHILA. PA 19106

July 26, 1984

Associate Attorney General D. Lowell Jensen
U. S. Department of Justice
10th & Constitution Avenue
Washington, D. C.

Dear Mr. Jensen:

On further considering the appalling problems cited in my letter of June 25, 1984, the single most important contributing factor seems to me to be the underlying Department of Justice philosophy that not only tolerates but seems to encourage pervasive secrecy. It is hardly necessary to quote the many eminent jurists who have identified the strong connection between secrecy and government hanky panky of one kind or another. A close second to secrecy is the apparently conscious flouting of the law of the land by DOJ itself as laid out below. When the agency entrusted with enforcing our laws treats any law casually, the implications can be far reaching.

In the instant case, I filed several Freedom of Information Act requests in early March in an attempt to shed light on what did then and still does now appear to be a strange state of affairs. Not hearing from any of them, I filed an appeal in early May as provided by law. Several weeks later on calling to inquire regarding the status of my appeal (to which I should have received a formal substantive answer by that time according to law), I was informed that the Department was way behind and probably had not gotten around to even acknowledging receipt of my appeal. On pointing out that the law of the land required certain action, I was further informed that I could take the matter to court, but it really would not matter since department policy required processing these requests on a first come first served basis, there were only so many people working on the task, some of the requests were unreasonable, etc., etc. At this writing only one of some seven requests has apparently entered the

PAUL E. ATKINSON
118 PINE STREET
PHILA. PA 19106

Associate Attorney General D. Lowell Jensen
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July 26, 1984

review process since I have received one acknowledgement (although I have no way of knowing which one). As you know, the law clearly requires all government agencies to respond to all requests within ten working days. Almost five months have now elapsed since the original requests. Nothing at all has been heard on the appeal filed some three months ago.

Whether any of these requests were sidetracked by some people involved in the apparent rinky dinks detailed in my June 25 letter is not clear to me. As you know, the FOIA is based on the premise that the government and the information of government belong to the people. This premise and the fundamentals that flow from it are the cornerstones of our government, and set us apart from certain others around the world.

In my view, the same underlying philosophy that winks at the casual handling of the Freedom of Information Act leads to a situation similar to that described in my June 25 letter. Department of Justice priorities clearly need substantial revision.

Your comments are invited.

Very truly yours,

Paul E. Atkinson

cc: Subcommittee on Government Information, Justice
and Agriculture
House Committee on Government Operations
Att: Chairman Glenn English

9/10/84
Called Colleen [illegible] Atty. She
still doesn't
have letter. She
will call Pam
Dobey and get it.

9/7/84
Called Pam
Dobey - she has
returned the letter and
will deliver to Jensen's
office this A.M.

Called Jensen's office
they have not rec'd letter.
Agreed to call [illegible] A.M.

PAUL E. ATKINSON
118 PINE STREET
PHILA. PA 19106

Called assoc. atty gen'l as
He had not rec'd letter. Mr.
Jensen is out of country.
Was transferred to 633-2
Pam Dobey who advised
she had rec'd letter
and sent it to FOIA
office. If possible,
she will retrieve it.

August 24, 1984

Associate Attorney General D. Lowell Jensen
U. S. Department of Justice
10th & Constitution Avenue, N.W.
Washington, D.C.

sec'y
Colleen
633-3751

9/11/84
Called
again. The #
Colleen
gave me is
the wrong one.
She does
not have
letter. It
is in FOIA.
I suggested
delivering copy of
letter to Jensen
office. She
indicated
that might
be okay.
All in all
I feel somewhat of
a runaround is
going on.

Dear Mr. Jensen:

Please refer to my letters of June 25, 1984 and July 26, 1984.

You will recall that the former identified in some detail the political shenanigans and illegal machinations underlying a massive scam and the consequent coverup. These concerned financial monkey shines in the several hundred million dollar ball park by Sun Company in connection with their exit from shipbuilding more than three years ago. The connivances and/or active participation of senior Justice Department and SEC officials seems to have made the whole scheme possible.

The latter letter addressed the dilatory procedures of the Department of Justice regarding the Freedom of Information Act. The current situation ludicrously allows the very Justice Department officials involved in the scam above, or anybody else, to selectively withhold information if so inclined with negligible concern of exposure. Why the agency entrusted with enforcing our laws and administering justice tolerates such an abuse of common sense is beyond my ability to comprehend.

9/14 [illegible]

Pertinent to both of the above matters, it now appears (from information belatedly released by the Criminal Division under the FOIA) that the original input received by the Justice Department from the SEC about the whole subject in the first place was also grossly erroneous. What other information is presently being held under wraps by others is anybody's guess.

Will [illegible]

As you undoubtedly know, your own Office of Professional

9/11/84
Called
Sebzien's girl and
asked that a copy
of my letter be hand-carried
and sent to Jensen. She
demurred indicating she
would prefer to leave
[illegible] [illegible] [illegible]
until [illegible] [illegible].

9/13/84
OPR sec'y called
and indicated the letter
had been copied and
sent to Jensen.

9/14/84
Called and verified that
Colleen had letter. She did.
I then requested the opportunity
to meet at Jensen's convenience.
She asked me [illegible] and then.

and indicated that any meeting would have to be with OPR. I indicated I had met with them and would like to meet with Mr Jensen. She indicated no way. I repeated the same pitch indicating that I gathered there was no meeting possible was that the case? She said it was.

9/14/84

I called back to ask if that was really what they wanted to do ~~the~~ in view of the three fold question. She indicated they would not handle the letter. At one point [illegible] indicated that OPR is "handling this for us" whether this has any significance under the (2)(3) referral is not clear.

9/25/84

Called OPR asked for [illegible]. He is out until Monday. Requested to talk with someone - explained Aug 24 letter to Jensen. No one was in. They will call.

9/26/84. Called again. Thomas will talk but is tied up. Will call.

Keith Thomas [illegible] about on how [illegible] open and pleasant. I recently [illegible] by FBI [illegible] [illegible] is getting DOJ answer on Briefingate - ok. Keith agreed that this was different from the matter they are investigating and will find out who ~~and~~ will reply. I requested a copy of latest annual report. He will send. All healthy and good.

10/11/84

Called to ask Thomas about ~~the~~ DOJ answer to Briefingate inquiry. Explained to girl - Thomas will call back after lunch.

10/12/84

Talked to Keith Thomas re Briefing. He sent my letter to Criminal Division - he who handled the matter - from whom I should get a reply. He was most pleasant. I went through the FBI press release, subcommittee report - etc. Made the pt. that subcommittee had witness [illegible] problems and would assume DOJ would investigate. What is DOJ policy and who is spokesman Criminal Division or P.R. dept, He says they will [illegible]

Responsibility (the unit established in the wake of Watergate) has been involved in investigating this whole Sun matter for some four months now. The very fact that their investigation is still ongoing would seem to confirm the seriousness of the whole affair.

The purpose of this letter is threefold. First, the Statute of Limitations is inexorably running. It would be ironic indeed if improper delay consequent to a bogus SEC investigation, secrecy agreements between Sun and government, Department of Justice dilatory handling of the FOIA, and other matters rewarded those who created the delay by making the whole thing moot as a consequence of the Statute of Limitations. Under the circumstances, I would request that a Department of Justice prosecutor from outside the Philadelphia area be assigned to assess both of the nine month old multi-million dollar complaints which seem to have been lost in the shuffle.

Second, under your authority for the hiring, firing and administration of lawyers spelled out in Federal Regulations, I would request that an investigation of the facts surrounding the conduct of all the Justice Department lawyers involved including senior officials be made to the end that appropriate disciplinary action is taken.

Third, the report of the Albosta Congressional Subcommittee indicates sharp disagreement with theDepartment of Justice conclusions regarding the credibility of witnesses and other matters in the Briefingate affair. This goes to the whole issue of the adequacy and objectivity of the Department of Justice handling of that whole matter. Plainly, this is one of the issues involved in the subject case. Under the circumstances, it would be helpful to have answers to the following questions concerning the Briefingate matter.

1. Does the Justice Department plan to investigate and prosecute, if appropriate, those witnesses whose testimony the Subcommittee found not credible? If so, which ones?

2. Who or what group in the Justice Department reached the conclusion regarding witness credibility? In view of the political sensitivity of this conclusion was concurrence sought from senior Justice officials? If so, who was involved and what was the basis for the decision(s)?

3. Has the Department of Justice investigated the matter detailed on page 57 of Volume 1 of the subcommittee report headed the WLS October 15, 1980 News Report? If not, do they intend to?

Finally, I have found the simple "good business" amenities of the Department inexcusable. There appears to be a mindset extant that somehow equates prosecutorial investigation with not answering or returning telephone calls, and not acknowledging or answering correspondence. Since this has been such a problem, I would particularl appreciate your acknowledging receipt of this letter and advising me of approximately when I might expect a reply.

Thank you in advance for your courtesy.

Very truly yours,

Paul E. Atkinson

cc: Office of Prof. Resp., DOJ
    Att: David P. Bobzien

    Subcommittee on Human Resources
    Att: John Fitzgerald

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

OFFICE OF THE
GENERAL COUNSEL

Rec'd 1/10/85

6-6

January 8, 1985

Mr. Paul E. Atkinson
118 Pine Street
Philadelphia, PA 19106

Dear Mr. Atkinson:

This is in response to your letter dated August 27, 1984 to Chairman John S.R. Shad, which was referred to me because it included allegations of staff misconduct. In the letter you allege (1) that no reply or acknowledgement had been made to your letters to Chairman Shad dated August 24, October 13, and November 8, 1982; (2) that the letters referred to had been intercepted by staff members; (3) that a notation on the intra-agency referral form regarding the August 24 letter was "obviously backdated;" (4) that the Commission's Philadelphia Branch Office identified three SEC investigations to Senator Specter's staff and the Department of Justice, when only one preliminary inquiry was undertaken; (5) that the scope and purpose of the preliminary inquiry "did not tackle the substance of the question raised;" and (6) that based on the foregoing "there appears to be a gigantic hoax." In addition, you have requested that the matter be "exposed" and appropriate disciplinary action be taken against those persons who participated "in the whole illegal scheme."

I have reviewed pertinent portions of your correspondence with the Commission as well as portions of the file relating to Atkinson v. SEC, Civil Action No. 83-2030 (Oct. 27, 1983 D.D.C.), and have spoken to various Commission staff members, and to a member of Senator Specter's staff. Based on this inquiry, I have concluded that no staff misconduct occurred. In the balance of this letter, I will address each of the points you raise.

With respect to letters addressed to Chairman Shad, you should be aware that normal procedure for handling correspondence to the Chairman which deals with specific questions or factual situations is to refer such letters, at least initially, to the Division or Office with expertise in the particular area. Your letter to Chairman Shad dated August 24, 1982, included copies of previous letters to you from the Director of the Division of Corporation Finance and a member of the staff of that Division. Your letter to Chairman Shad indicated your disagreement with the substantive positions taken by the staff members in those letters. In addition, you requested that Chairman Shad arrange a review of the matters at issue and essentially effect a change in the Division's position, that is, you requested "that Mr. Eckerd's letter be expunged from the record or equivalent action be taken."

When this correspondence was forwarded to the Division of Corporation Finance, the then Associate Director of the Division, John J. Huber, determined that "no response was necessary." As the staff responses to your queries accurately reflected the Division's position, it was apparently Mr. Huber's view that a response to your letter would serve no purpose. Accordingly, no substantive response to your August 24 letter was sent.

Subsequently, in response to two FOIA requests you made for documents relating to your correspondence with Chairman Shad, you received two copies of the form referring your August 24 letter to the Division of Corporation Finance. Both copies included the notation "no response necessary - per Huber." However, in response to your second FOIA request, you received a copy of the form which also included the notation "rsp sent 9/7/82." You have concluded that the latter notation "was obviously backdated" and made subsequent to November 22, 1982 (the date of the response to your first FOIA request), but prior to March 1983 (the date of the response to your second FOIA request).

You apparently concluded that the notation regarding a response was inserted to cover-up the fact that no response was sent to you. However, what appears more likely is that the first copy of the form was sent to you from the files in the Chairman's Office, which would only indicate any action taken or conclusion reached by the Division to which the matter was assigned. The second copy was probably sent to you from the Division's files with the notation indicating not a response to you, but rather, that a response to the Chairman's office had been sent by the Division. In other words, the dated notation was probably intended to show that a response was sent to the Chairman's Office, rather than to you.

Records in the Chairman's Office indicate that your October 13 letter (a copy of which was not in the files) was referred to Diane G. Klinke, then Legal Assistant to the Chairman. Her response to you, dated October 27, 1982, stated that she had both reviewed your correspondence with the Commission's Division of Corporation Finance and discussed your questions with members of the Commission's staff. She concurred in the Division's conclusions.

I have been advised by the Chairman's Office that your letter dated November 8, 1982, was referred to George Fitzsimmons, then the Commission's Secretary. Mr. Fitzsimmons died in August 1984, and there was no record in his files of your letter.

You have sent to me an annotated copy of a letter dated November 9, 1983, from you to the U. S. Attorney for the Eastern District of Philadelphia. The copy was one you received pursuant to an FOIA request to that Office. It had handwritten notes which included a date, the notation "called Tom Monahan" and four phrases, among them "3 investigations." You question the reference to three investigations, which you conclude was a reference by Mr. Monahan, Assistant Regional Administrator of the Commission's Philadelphia Branch Office, to three Commission investigations. I have spoken to Mr. Monahan about any conversation which he had with the Philadelphia U. S. Attorney's Office concerning your complaint. Mr. Monahan has no notes of his conversation with the U. S. Attorney's Office and no specific recollection of what was said.

I have spoken to a member of Senator Specter's staff, concerning Senator Specter's February 13, 1984, letter to you which referred to "three previous investigations conducted by the Securities and Exchange Commission * * *." I was advised that the reference to three Commission investigations was a misstatement. Senator Specter's Office will communicate with you in that regard.

You also take issue with the scope and purpose of the inquiry undertaken by the Commission's Philadelphia Branch Office. However, the declaration of Wayne D. Geisser, filed in connection with the FOIA action captioned Atkinson v. SEC, supra, states that in response to your complaint to the Commission's Philadelphia Office, Mr. Geisser, a senior staff accountant, and John Crayton, an attorney in that Office, inquired into the matters you raised. The inquiry lasted from July 1982 to December 1982. The staff members recommendations were reduced to a memorandum. The recommendations were concurred in by senior staff of the Philadelphia Branch Office and forwarded to the Washington Regional Office. The Regional Administrator of that Office, after reviewing the memorandum, determined to close the matter without recommending to the Commission that it enter a formal order of investigation.

Although you complain about the scope and purpose of the Commission's inquiry, Mr. Geisser's declaration states that the staff specifically requested of Sun Company representatives "an explanation as to the nature and composition of the $236 million write-off relating to the provisions for termination of the Sun Shipbuilding Facility." That is the question to which you sought an answer. The Commission's staff members were given information in response to that question in meetings with representatives of Sun on October 8 and December 3, 1982. See Declaration of Wayne D. Geisser submitted by the Commission in Atkinson v. SEC.

The Commission withheld notes of those meetings from you, when you requested them pursuant to the FOIA. In the FOIA action you subsequently instituted, the District Court for the District of Columbia held that the Commission properly withheld the documents.

Paul E. Atkinson
Page Four

It appears from the records that your complaint was given careful review. The fact that the Commission's staff reached conclusions not in accord with your own, does not, in my view, support your conclusion that there has been "a gigantic hoax."

I trust the foregoing is responsive to the issues raised in your August 27, 1984 letter to Chairman Shad.

Very truly yours,

Myrna Siegel

Myrna Siegel
Ethics Counsel

cc: David Bobzien, Assistant Counsel
Office of Professional Responsibility
Department of Justice

1/24/85 [illegible]
before 1100 - No answer.
Called Gen'l Counsel and
was informed that [illegible] was
[illegible]

PAUL E. ATKINSON
118 PINE STREET
PHILA. PA 19106

January 14, 1985

Myrna Siegel, Ethics Counsel
Securities and Exchange Commission
450 N. 5th Street
Washington, D.C. 20549

Dear Ms. Siegel: 272-2430

Thank you for your letter of January 8, 1985. It is obvious that you have reviewed the matter in substantial depth and reached your conclusions based on the facts as you see them.

However, the conclusions that you have reached don't seem to follow logically. It may be that the backdrop against which these events occurred has not been sufficiently fleshed out, or perhaps I have not identified all the pertinent facts. My problem is that I have been unable to reconcile the facts laid out in your letter (which are essentially correct) with the rest of the obvious facts and the circumstances that existed at the time. The only scenario that seems to me to fit all the substantive facts and circumstances is the hoax theory, but should some other plausible explanation be forthcoming I am perfectly willing to modify this rather explosive conclusion.

The last paragraph of the first page of your letter deals with correspondence surrounding the unfortunate decision of the Corporation Finance group involving accounting materiality. Your Mr. Eckard argued at that time that asset value and not income was the proper basis for determining accounting materiality and that therefore $200MM was not material in the Sun picture. Since this was obviously incorrect (would be later disavowed by your own SEC enforcement people), I sought further review of this matter as laid out in the subsequent correspondence. Your letter identifies the further action in this area and properly recites my request to purge the record of obviously incorrect and useless material.

A few days following the surfacing of this argument I met with your Messrs. Geisser and Crayton at the SEC office in Phila.

and essentially made the same request to them. Geisser agreed, as any capable accountant would, that the Corporation Finance Divn. opinion was obviously wrong, but he did not think that the letter could be expunged from the record. I'm sure that Geisser must have indicated the main thrust of his thinking later to Eckard for the simple reason that the Enforcement Division formal action then underway continued for several months thereafter. Plainly, there would be no purpose in spending several months reviewing a $200MM matter if $700MM were immaterial.

If the foregoing were not sufficient to make the point yet another incident adds even more substance. Dennis Surprenant was the chief enforcement attorney of the SEC in Phila. at that time. Ms. Tam Heckle was the office manager for Congressman Tom Foglietta. I had asked Ms. Heckle to review the entire matter and in this process she indicated she had spoken with Surprenant. As can readily be seen from my enclosed handwritten telephone conversation memo (a copy of this memo was also enclosed with my original complaint to Phila. U.S. Atty. in Nov. '83) Surprenant too recognized the problem which he evidently identified as a "Washington" problem.

Summarizing the controversy surrounding accounting materiality, the SEC Enforcement Division project leader agreed that the Corp. Fin. reasoning was just plain wrong, the formal Enforcement Division action went forward for some nine months investigating the appropriateness of the $236MM item (which would have been ludicrous if the Corp Fin position were sound), and the Chief Enforcement Attorney of the SEC Phila. office indicated that the Washington group had problems.

Against this backdrop the events described on the second page of your letter took place.

Regarding the no response necessary comment I presume you would agree that it is not a constructive practice in government or industry that letters are not answered. One's tendency to treat this cavalier action casually, as the normal practice of a busy executive, is not enhanced by the fact that the main thrust of the ignored letter inquired why previous correspondence on the same subject had not been addressed. This sort of practice can lead to all kinds of problems which is the basic reason why it is sound practice to require that letters be answered in the first place. What the underlying rationale might have been in this case is anybody's guess. Plainly, the reasons for such action should be explored in depth with all involved.

With respect to the backdating and the disappearing memo the premise of more than one copy that you advance is obviously possible. Recognizing this at the time, I inquired regarding this very possibility of your Mr. Heine (FOIA office), and he after specifically rechecking assured me that he had forwarded copies of all information available in Commission files. Any other action on his part would of course be deliberately contrary to the FOIA, and I have no reason to suspect this to be the case. Under this circumstance the two copy theory seems remote, although it is of course possible. I would suggest, however, that my interpretation of this whole episode far more closely fits the facts than the others advanced to date.

I have reviewed my several discussions and correspondence with Diane Klinke and don't believe that they add any important substance to the material presented above.

Turning to the Enforcement Division activities described in your letter, I have no problem with your accuracy in recounting the events so far as they go. Again, however, I have trouble in understanding how they lead to the conclusion you reach, particularly when a more complete picture of the whole is considered.

Regarding the three phantom SEC investigations allegedly identified by Mr. Monahan it is now clear that these investigations did not take place. However, it hardly seems credible that both the handwritten notes on the U.S. Attorney material and the reference in Sen. Specter's letter to these three investigations were the figments of people's imagination. In addition, my notes of a telephone conversation with Greg Farrell of Senator Specter's office indicate that Mr. Monahan told Greg that three investigations took place. Further, your letter states that Mr. Monahan has no notes of his conversation with the U.S. Attorney's office, and has no specific recollection of what was said. Under the circumstances it seems reasonable to me to conclude that such conversations did in fact occur.

Regarding the nature of the formal inquiry the SEC people for some strange reason were evidently precluded by their own agreement with Sun from examing Sun's books. Obviously, financial conclusions drawn from second hand material manufactured and volunteered by the subject of an inquiry have little usefulness. Your attention is invited to the bottom half of the last page of my June 15, '84 letter to Mr. Bobzien of the Justice Dept., identifying one straightforward method (looking at the material supporting the journal vouchers underlying the $236MM item) to get to the heart of the issue. You will note my conclusion that "the very lack of pursuing this obvious and simple route may be the most damaging part of this whole strange affair."

With respect to the scope of the inquiry my concern was and is that the inquiry did not focus on the marine nature of the issues. As you know the matter at issue involved the reality of a $236MM item, predominantly of a marine nature. In my view any inquiry into the appropriateness of the quantum of a several hundred million dollar marine issue can only be conducted reasonably by using the expertise of properly qualified marine surveyors.

The foregoing material addresses the several specific areas detailed in your letter. In addition there are several other areas that you have not chosen to discuss at all that I have identified as important in reaching my conclusion that this whole episode was and is a gigantic hoax.

These include the discrepancies in the affidavits accompanying the SEC brief in the FOIA lawsuit, the need for any secret agreement at all between Sun and the SEC, the question of whether a real sale of Sun Ship facilities actually occurred, the leisurely pace of the SEC inquiry, the SEC refusal to look at the Sun stock manipulation matter, the handling of Sun confidential business information outside SEC internal FOIA guidelines, and the subsequent series of "smoking guns" that have now surfaced in the Dept. of Justice activities.

As one stands back and ponders this whole matter, going beyond the SEC part in the whole, the overall evidence appears overwhelming that indeed a hoax of a tremendous order of magnitude is involved. The ramifications to all concerned obviously require proceeding carefully and deliberately. On the other hand no useful purpose will be served by avoiding sound and timely enforcement of the law.

I would hope that you would reconsider your views based on the additional facts and the chain of logic that seems to me to be persuasive. I will call in a few days to see what your thinking may be. Should you feel that further discussion would be appropriate I will be pleased to make my self available.

Very truly yours,

Paul E. Atkinson

PEA/MP

cc: David Bobzien
U.S. Dept. of Justice

PAUL E. ATKINSON
118 PINE STREET
PHILA. PA 19106

January 23, 1985

David Bobzien, Esquire
Office of Prof. Resp.
Dept. of Justice
10th and Constitution Avenue
Washington, D.C.

Subject: Sun Company

Dear Mr. Bobzien:

You will recall my several letters over the last year or so indicating that the alleged meetings with prosecutors, that high Justice Dept. officials insisted had occurred, never did in fact occur. Why anyone would hang their hat so vehemently on the existence or non-existence of meetings that could be readily verified by any number of elementary means was and is a puzzling matter.

It now develops that even this simple verification process may not be necessary. One of your own DOJ attorneys, Ms. Margie Smith, FOiA section of EOUSA, telephone No. 633-1038, indicates that she talked to Asst. U.S. Attorney Gary Glazer (who originally handled the Sun complaint in Phila.) while he was still in govt. According to Ms. Smith, Glazer stated that he never met with me and the internal memos so indicating were false. Glazer has evidently returned to private practice, but I presume could be interviewed if necessary.

As a consequence of my appeal of certain Criminal Division action under the FOiA I have now received material, previously withheld, on two internal Fraud Section memos relating to the question of the alleged meetings.. Your Mr. Phil Kesaris (724-6278) is familiar with my FOiA appeal, and I presume can identify whatever material is required. You will note that the Fraud Section memo of Feb. 16, 1984 states, among other things, "Glazer indicated he had, indeed, met with Atkinson, as had other Assistant United States Attorneys." Obviously, this is blatantly false, since no meetings at all occurred. Whether the underlying chicanery concocting this patently untrue statement occurred in Washington or Phila. (or both) may or may not be important. The simple fact that the DOJ posture in the whole matter (as illustrated in several key documents) is based on feet of clay is hugely important. In addition, the motives of whoever conceived and memorialized the bogus statement need exploration and examination. One cannot help but conclude that internal controls against this kind of thing either don't exist or are easily sidestepped. Manufacturing evidence seems like a strange way of administering justice.

In any event, after more than a year of toe dancing around a $236 million book cooking matter and other highly significant things we now have the spectacle of two branches of the same Justice Dept. taking opposite positions concerning the simple factual matter of whether certain meetings occurred. Mixed into the whole are spurious documents created for who knows what purpose. Obvious questions arise concerning what is going on and why.

It seems to me that the Dept. of Justice should first root out the source of the obstruction of justice and delay, get their act together, determine what the true facts are, and take whatever action is appropriate to enforce the laws of the land. Whether this whole can of worms involving top officials of the Dept. is due to bureaucratic infighting, the fact that a political fix is in, or something else is anybody's guess.

In the meantime, several Freedom of Information requests on this whole matter are many months overdue perhaps being suppressed by the very group that is at the root of the current fiasco.

Very truly yours,

Paul E. Atkinson

PEA:MP
cc: Myrna Siegel, SEC; Margie Smith, DOJ; Phil Kesaris, DOJ

Memorandum

Subject Mr. Paul A. Atkinson/Sun Company

Date FEB 16 1984

113-0

To Files

From

Fraud Section
Criminal Division

We received the attached letter from Mr. Atkinson asking us for a meeting to discuss his complaints against Sun Company. He does not feel the United States Attorney's Office in Philadelphia has been helpful.

I called Assistant United States Attorney Glazer in Philadelphia, Pennsylvania regarding this matter. Glazer indicated he had, indeed, met with Atkinson, as had other Assistant United States Attorneys. They found no basis for a criminal investigation. Glazer sent me a copy of various items referring to this matter, which are attached.

Commit with EOUSA [illegible] EOUSA

Also, the Securities and Exchange Commission (SEC) has checked these allegations and failed to find evidence of criminality. In fact, according to Glazer's memo of 11/16/83, Atkinson was abusive to SEC personnel and filed a FOIA suit against SEC which was unsuccessful.

[illegible] EOUSA

There has been a congressional on this from Senator Spector and an FBI agent interviewed Atkinson, with whom Glazer has met. The FBI agent also did not determine that there was evidence of a Federal violation.

I suggest that a personal Department of Justice conference would not be useful and wrote a letter to Mr. Atkinson advising him of our decision.

Attachment

Typed: 3/7/84

Paul Atkinson/Sun Company

113-0

Files

Fraud Section
Criminal Division

E46
7c

On February 29, 1984, I received a call from Mr. Nick Nokes, a Staff Assistant to Congresswoman Schroeder, regarding a letter Mr. Paul Atkinson has sent the Judiciary Committee regarding the Sun Company. Mr. Nokes wanted to know the specific allegations and what Justice had done in this matter. I told him I did not have the file in front of me, but I did remember something about the case.

By way of background, Atkinson is a former employee of Sun Company who has alleged that the Sun Company has engaged in fraudulent conduct. Atkinson first took his case to the United States Attorney's Office in Philadelphia, but when they did not establish the existence of any Federal violations, he wrote DOJ asking to meet with someone in Washington. This letter was sent to the Fraud Section and assigned to me. I checked with AUSA Paul Glazer in Philadelphia and he told me that he and other assistants in his office had met with Atkinson, the FBI had interviewed him, and the Securities and Exchange Commission had checked into his allegations on more than one occasion. Mr Glazer sent me a package on this matter which is in the Criminal Division file. No evidence of Federal violations was forthcoming. After reviewing the information supplied by Mr. Glazer, we wrote Mr. Atkinson that a meeting would serve no useful purpose. James Graham, Deputy Section Chief, Fraud Section and John McCullough, Attorney, Fraud Section approved this decision. After receiving our response, Mr. Atkinson apparently wrote the House Judiciary Committee requesting further review of this matter.

[illegible] with EOUSA

[illegible] EOUSA [illegible]

I gave Mr. Nokes a brief summary of the background and suggested that he should send a Congressional to DOJ for an official response on this matter. I anticipate that such a Congressional will be sent to AAG McConnell and then be referred to us.

Section Chron

113-0

4

U.S. Department of Justice

United States Attorney
Eastern District of Pennsylvania

(215) 597-0248

3310 United States Courthouse
Independence Mall West
601 Market Street
Philadelphia, Pennsylvania 19106

JTL:pep

February 5, 1985

Ms. Susan A. Nellor
Director
Office of Legal Services
Executive Office for United States Attorneys
Department of Justice
10th and Constitution Avenues, N. W.
Washington, D. C. 20530

Attention: Ms. Regina Brickhouse

Re: FOIA/PA Request - Paul E. Atkinson
Request No. 84-0877R

Dear Ms. Brickhouse:

The attached documents numbers one through five were determined to have originated in this office with regard to the above-captioned requester. These documents were generated as a result of various meetings between personnel in this office and the captioned requester. Preliminary investigation of the complaints made by Atkinson resulted in a decision that no further action was necessary with regard to the allegations since no federal offense was evident. It is the determination of this office that these documents numbers one through five may be disclosed to the requester since the material is not exempt from disclosure pursuant to 5 U.S.C. Section 552a(j)(2).

Very truly yours,

EDWARD S.G. DENNIS, JR.
United States Attorney

Joseph T. Labrum III

JOSEPH T. LABRUM, III
Assistant United States Attorney

Enclosures

United States Attorney
Eastern District of Pennsylvania

(215) 597-0248

3310 United States Courthouse
Independence Mall West
601 Market Street
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JTL:pep

February 5, 1985

Ms. Susan A. Nellor
Director
Office of Legal Services
Executive Office for United States Attorneys
Department of Justice
10th and Constitution Avenues, N. W.
Washington, D. C. 20530

Attention: Ms. Regina Brickhouse

Re: FOIA/PA Request - Paul E. Atkinson
Request No. 84-0877R

Dear Ms. Brickhouse:

The attached documents numbers one through five were determined to have originated in this office with regard to the above-captioned requester. [redacted] Preliminary investigation of the complaints made by Atkinson resulted in a decision that no further action was necessary with regard to the allegations since no federal offense was evident. It is the determination of this office that these documents numbers one through five may be disclosed to the requester since the material is not exempt from disclosure pursuant to 5 U.S.C. Section 552a(j)(2).

Very truly yours,

EDWARD S.G. DENNIS, JR.
United States Attorney

JOSEPH T. LABRUM, III
Assistant United States Attorney

Enclosures

MEMO TO: File

DATE: May 8, 1985

RE: Additional FOIA info from EOUSA on Sun matter

My memo of April 2, 1985 indicates on page 2 that certain FOIA information requests concerning the Philadelphia U.S. Attorney's office have been outstanding for more than a year. This material has finally been received and again shows the same pattern of deception that has been apparent in many phases of this whole strange affair.

For the sake of good order (and future reference), this FOIA subject matter is separated into four batches, Asst. U. S. Attorney Glazer's 1/31/84 letter to Senator Specter, AUSA Glazer's 11/16/83 internal memo, subject matter concerning my letters of 12/5/83, and 1/16/84 to the Phila. U. S. Attorney, and the Sun stock price manipulation matter as detailed in my letter to the Phila. U.S. Attorney dated 11/15/8 The first two are documents released under FOIA and the last two are specific areas of interest in which the Phila. U. S. Attorney's office indicates there are no documents in their files.

Asst. U. S. Attorney Glazer's letter to Sen. Specter 1/31/84 (attached)

Glazer's letter essentially implies that I met with other Asst. U. S. Attorneys, and presented the same information to them that I had to him. They then allegedly determined that no further action could be taken by the Phila. U.S. Attorneys Office.

This is not true since no meetings at all with any AUSAs ever took place. This was not for want of trying to meet with them as detailed at length in my letters of December 5, 1983, and January 16, 1984, to the Phila. U. S. Attorney.

The whole becomes more ominous when one realizes that Glazer undoubtedly had access to the two letters above some two weeks before he wrote to Senator Specter, and therefore was well aware of the results of my efforts to discuss the disputed facts, yet chose to portray things as they were not. Seen in this light, the whole matter becomes a purposeful act of deception for who knows what purpose.

Regarding the original SEC inquiry, it became clear that this was a sham, both from the data disclosed when all the SEC withheld information was indexed in the FOIA lawsuit and from the secret agreement between Sun and the SEC (not to look at Sun's books) that surfaced simultaneously in court documents. My November 9, 1983, complaint letter filed shortly thereafter with the U. S. Attorney indicated as much, and set forth my view that this whole thing was a criminal matter, as opposed to a civil one.

Against this backdrop Asst. U. S. Attorney Glazer's action in talking only to SEC's Monahan, whose investigation was being questioned, about allegations involving a multi-million dollar matter is appalling. This seems akin to asking a person accused of taking a huge bribe if indeed he did such a thing, accepting his denial as gospel, and then disregarding the financial facts that gave rise to the accusation in the first place. Plainly, talking to an alleged wrongdoer to obtain his side of the story is completely in order, but then dismissing the whole episode based on the culprit's self-serving representation of false facts is either completely naive or something much more sinister,

The other troubling areas of Glazer's letter involves his allusion to "the types of cases that we are empowered to investigate" and the FBI interview.

The former seems to imply that our Justice Department has decided to investigate and prosecute only certain types of crime. Plainly there must be some budgetary constraints on law enforcement. However, one would think that public policy would be paramount in such considerations, not some self-serving reference to smoky regulations. Under any set of circumstances, it is difficult to see how investigation of an alleged fraud involving millions of dollars and thousands of people would not be in the public interest.

The FBI interview was initiated by me in an effort to understand why the DOJ prosecutors entrusted to enforce the law seemed to be avoiding a meeting to discuss disputed facts. This FBI meeting is described in my letter of February 23, 1984 to Mr. Ogren of the Fraud Section and turned out to have no substantive importance.

In sum, the reasons given to Senator Specter for the DOJ action seem to consist principally of blue smoke and mirrors. The motives underlying such deception are not clear.

AUSA Glazer's Internal memo of 11/16/83 (attached)

This memo identifies a certain telephone conversation with SEC Asst. Regional Adm. Monahan and plainly identifies Monahan as the source of the false information regarding the three phantom investigations. It has been identified elsewhere that only one preliminary inquiry was conducted. The main thrust of the memo thus confirms the handwritten notes (evidently made by Glazer) on Page #1 of my original complaint letter re Sun dated 11/9/83. Among other things, my November 9, 1983, complaint letter raised serious questions concerning the propriety of the SEC inquiry which allegations evidently triggered the telephone conversation in the first place. Under this circumstance, discussion of the subject matter only with the alleged culprit is plainly inappropriate and reduces the whole DOJ investigation to a charade.

Now, in addition to the obviously out of order telephone episode, we have the spectacle of the DOJ investigator reporting as true, false information provided by the very person whose inquiry was being questioned in the first place. Further, this false information was memorialized in a memo and seems to have been circulated far and wide. The fact that an Asst. U.S. attorney, entrusted with investigating a multi-million dollar allegation of hokey-pokey, would allow himself to be used as a vehicle for spreading malicious gossip (and false gossip at that) that originated with the subject of the inquiry, is appalling. This behavior is reprehensible and unprofessional. The whole performance has grave Privacy Act implication with the Government responsible for who knows what damages. More importantly, the chilling effect of such behavior on ordinary citizens' reporting violations of law to Department of Justice prosecutors is incalculable.

My letters of December 5, 1983 and January 16, 1984

Essentially, these describe in some detail the marathon efforts over two three day periods more than a month apart to simply talk with someone in the Phila. U. S. Attorney's office about my November 9, 1983 and November 15, 1983 multi-million dollar complaint letters alleging various criminal activities of Sun. There would seem to be no conceivable reason, except hanky-panky of one kind or another, why anyone entrusted with enforcing our laws would not answer or at least acknowledge receipt of these letters. At the time the complete lack of response struck me as peculiar in the extreme.

Seeking some sort of clue to this oddball behavior I requested, under the Freedom of Information Act copies of documents relating in any way to these letters.

One would expect to encounter signs of all sorts of routine office procedures (routing slips, computer records of one kind or another, progress reports and other management tools, interoffice memos, accounting forms, etc.) and even some specialized ones in a huge law enforcement office (logs of all incoming phone calls, cataloguing of envelopes or other similar tailored procedures). If nothing else, one would think some of my many telephone calls requesting return calls would generate telephone messages.

Against this backdrop the FOIA material released indicates absolutely nothing at all. As one ponders this whole episode, the fact that not one document was generated strains credibility beyond the breaking point.

In addition as indicated earlier, no reply to these letters was ever received. Together, these two facts seem so strange that one concludes it is almost certain that these letters were handled outside the normal routine. The implications of this conclusion are extreme.

It is, of course, possible particularly given the other peculiarities of this matter that someone simply decided to withhold information contrary to the FOIA. This, too, has extreme implications.

My Letter of November 15, 1983

This letter laid out chapter and verse of a multi-million dollar stock price manipulation scheme. This whole topic is purely a Sun stock matter. It has no more connection to the Sun Ship matter than apples do to oranges. I had previously requested the SEC to review this matter and encountered a series of contorted arguments that made no sense at all to me as I pointed out in some detail in correspondence with Mr. Monahan. In addition, I came across a strange Sun exemption to certain SEC regulations that was glossed over and never satisfactorily explained. The lack of SEC action in this whole area too, seemed extremely peculiar, and was part of the reason for my filing a detailed criminal complaint on this stock manipulation matter.

One would expect all the same routine paperwork in this instance would be generated as in the assessment of any multi-million dollar fraud allegation. When nary a scrap of paper is generated, one concludes that either this matter too was removed from the office routine or for whatever reason, no investigation at all was conducted. In either case, this seems odd. My own opinion regarding this matter is that it has simply been suppressed to avoid the light of day.

It should be noted that my January 16, 1984 letter, some two months after the original allegation, specifically raised the issue of this matter, indicating that it appeared to be lost in the shuffle. Further direct inquiry regarding the status was made. As noted above, this letter was neither answered nor even acknowledged.

The facts underlying the four foregoing matters seem reasonably clear. It seems highly unlikely that any competent investigative agency would reach the conclusion that all is well in view of such a transparent series of ploys. Yet, this is exactly what our two major law enforcement agencies would have us believe. It seems much more plausible that several of the SEC and DOJ hierarchy are involved in a major effort to obstruct justice.

At this point, the overall modus operandi in these Sun matters is not clear. I have little doubt, however, that the current OPR/DOJ investigation will smoke this out. My own feelings, in view of the extreme lengths that people have gone to keep all this under wraps, are that we may well be surprised by the political stature of whoever proves to be the puppet master. What will ultimately be the situation for those Sun or Glenmede people involved is anybody's guess.

Regarding the Privacy Act implications involving me and my business associates, there would seem to be little doubt that important credibility damage has occurred consequential to the Glazer and Monahan false representations. We'll see what the legal eagles have to say in this area.

PAUL E. ATKINSON
110 PINE STREET
PHILA., PA 19106

May 28, 1985

Ms. Margaret Smith, EOUSA, DOJ
Mr. John Heine, SEC
Mr. Wm. Jones, Criminal Div., DOJ

RE: Sun Co. matter

Dear Ms. Smith and Messrs. Heine and Jones:

Please refer to my letters requesting under the Privacy Act that information in your files be amended to reflect an accurate, complete and relevant state of affairs concerning all phases of this Sun Co. matter. This letter concerns the scope and timing of the requested action.

My several letters and memos to various SEC and DOJ officials have outlined chapter and verse of the reasons why I have concluded that Sun Company, and the SEC and DOJ have engaged in a gigantic hoax aimed at suppressing the facts relating to the Sun exit from shipbuilding some years ago and various other matters. The Office of Professional Responsibility of the U.S. Dept. of Justice has been investigating this matter for almost a year now. Presumably whatever action is appropriate to enforce the laws of the land and prosecute those who are guilty will be taken.

The enormity of this whole matter is mind boggling. Each new disclosure of duplicity by public servants makes one realize how vulnerable our law enforcement agencies are to skillful political manipulation. From a Privacy Act standpoint, the sheer complexity of the whole is formidable. When one tries to assess the effect of substantial dissemination of spurious information, both within and outside the Government, the task is challenging indeed. Most ominous of all is the brazen, public be damned attitude inherent in the widespread stone-walling at high levels of our Government.

Under the existing circumstances, Privacy Act actions would appear to fall into three categories. Plainly those records that describe my personal activities and are obviously improper should be amended forthwith to reflect a true state of affairs.

Further, the probable oral and written extent of dissemination of the bogus information should be assessed and appropriate corrective measures taken. In the instant case, action clearly should be taken on the false Fraud Section memos, AUSA Glazer's memo of 11/16/83 memorializing Mr. Monahan's inaccurate comments, the backdated SEC routing slip, documents referring to the FBI "evaluation" that never occurred, and any other similar records that are inaccurate, incomplete or irrelevant on their face. Even if the amending may seem trivial in some cases, the message sent to the culprits is not.

The second category of issues involve material where there is a reasonable presumption of inaccuracy, incompleteness or irrelevance, but further review is required to determine appropriate action. This is by far the largest category and probably involves several hundred documents. Those are typified by the three examples reviewed in detail in the enclosed memo. These were chosen to illustrate the range of problems that is involved.

Passing beyond these two relatively straightforward pieces of the puzzle, a larger and more difficult category emerges involving how the Privacy Act copes with the insidious practice of stonewalling by high public servants. Clearly, when stonewalling occurs in conjunction with false and malicious personal information similar to that which has now surfaced in the Sun case significant personal damages can result. Obviously this result defeats the principal purpose of the Privacy Act, as identified in Sec. 2(b), yet as a practical matter the solution is not obvious.

In addition to detailing my thinking on the three records mentioned earlier, the enclosed memo represents my first cut at an overview of this whole ball of wax from a Privacy Act point of view. It may be helpful in placing the various occurrences in perspective.

Summarizing, I would think appropriate action on those items falling into the first category described above would be in order forthwith. Regarding the second category, it would seem to me that the particular items should be identified and some sensible program established to deal with them. With respect to the third category involving stonewalling, your comments or suggestions on how to proceed to implement the main thrust of the Privacy Act would be appreciated.

Thank you in advance for your attention to this important matter.

Very truly yours,

Paul E. Atkinson

PEA:jms

Enclosure

cc: David Bobzien OPR/DOJ
Daniel L. Goelzer, General Counsel, SEC

PAUL E. ATKINSON
110 PINE STREET
PHILA. PA 19106

August 9, 1985

David Bobzien
Office of Professional Responsibility
U.S. Department of Justice
10th & Constitution Avenue
Washington, D.C. 20537

Dear Mr. Bobzien:

The purpose of this letter is twofold. First, recent developments on two matters, which relate importantly to the Sun matter your office has been investigating for many months now, are discussed in some detail. Second, certain gross invasions of personal privacy arising from this Sun subject matter are identified.

My letter to Glenmede Trust Company (large charitable trust and controlling Sun shareholder) of 6/19/85 indicated, among other things, trumped- up information concerning my activities had surfaced in DOJ files causing who knows how much damage. In an attached memo the background of this whole Sun Ship episode was detailed from the beginning from the personal privacy standpoint complete with a recitation of the less than exemplary tour through the hierarchy of the law enforcement agencies.

Some two weeks later, the CEO of Sun was relieved of his duties, amidst press comments concerning an innocuous changing of the guard. My 7/9/85 letter to Glenmede noted the strange timing of the CEO change relative to my previous letter, and the bland tenor of the press reports. In view of this apparent conflict, my letter requested that Glenmede clarify the situation, and either confirm the press reports or indicate whatever might be the actual case.

Glenmede chose to ignore this inquiry by simply acknowledging receipt of my letter without comment. When a controlling shareholder of a large public company avoids comment on a matter going to the very heart of the integrity of the public company, it seems reasonable that there is "something rotten in Denmark." For some odd reason the Glenmede letter dated July 15, 1985 was not received until July 31, 1985. Examination of the envelope revealed a postal meter date of July 15, 1985 further complicating the puzzle.

What all this soft shoe footwork indicates, coming on top of several other attempts to make things appear to be what they are not, is hard to say. One thing would appear to be almost certain. The passing of the CEO baton at Sun was not the straightforward matter it was represented to be in the press.

Questions in many other areas arise. These may or may not be significant in the overall picture. Was Sun or Glenmede the primary factor behind the apparently deep political penetration of the SEC and the Justice Department? If so, what was the modus operandi? Who was involved in the Government arena and how? Why is the controlling shareholder of a public company stonewalling a simple question at this stage? What part, if any, did the Sun Board of Directors play in all this? Ditto with the Glenmede Board? How about the new Sun CEO? There are obviously more questions raised than answers.

Turning to the SEC area, a purported ethics investigation was conducted by the SEC Ethics Counsel. The result of this is set forth in Ms. Siegel's letter to me of January 8, 1985. My reply of January 14, 1985 identified my view of the subject matter in some detail. The several conflicts can be resolved in whatever turns out to be the best way of coming to grips with particular items. Although the merits of the several issues seem clear, it is not my purpose at this point to become involved in debate over these facts, conclusions or other matters. The simple point about this whole thing that seems appalling to me is that the investigation which plainly involved serious allegations of criminal misconduct by SEC employees was carried out by the SEC instead of the Department of Justice as specifically required by published regulations. In this case the regulations seem particularly compelling providing sensibly that criminal matters will be handled by those skilled in criminal law, not patent, securities, labor or other branches of the law.

More ominously the SEC General Counsel seems to have placed his seal of approval on this procedure despite the obvious pitfalls being brought to his attention several times.

The enclosed correspondence with the SEC General Counsel regarding this whole peculiar situation is self-explanatory. As in the Glenmede matter many more questions arise than answers. Not the least of these involves the casual waiving of rules and regulations by public servants and the degree to which this insidious practice exists. Plainly, there is no purpose in going through the motions of the rule making procedure if these can be waived willy nilly by the public servants involved.

Turning to the personal privacy area, two matters are of important concern. First, the bogus Fraud Section memos that we discussed last April, have created an intolerable situation in that they have gone uncorrected for many months now leading to all kinds of speculation by the grandstand managers. Plainly, these require immediate correction. Second, the combination of the false and malicious gossip evidently initiated by SEC's Mr. McMonahan in an 11/16/83 telecon and circulated by AUSA Glazer, and Glazer's insidious handling of this whole situation with Congressional people and others, has portrayed a dangerously misleading personal scenario. All the records that identify this whole bogus can of worms require correction now.

Obviously, any investigation of serious allegations like those involved in the subject matter need to proceed unimpeded. This is particularly true in cases like the current one where political improprieties may be involved. On the other hand there are those who argue that the rights of individuals are paramount and neglecting those under any guise is highly dangerous. Experience has shown repeatedly that many of the factors judged by some to be "larger considerations" did not turn out that way. My own views in this area are indicated in the enclosed appeal under the Privacy Act. One would hope in the present case that both goals can be accomplished.

Documentation on any or all of the foregoing is available as required. Should you desire any additional information, please give me a call.

Very truly yours,

Paul E. Atkinson

Enclosures

cc: Daniel Goelzer, S.E.C. General Counsel
Glenmede Trust Company, Attention: R. I. Smith

PAUL E. ATKINSON
118 PINE STREET
PHILA. PA 19106

September 24, 1985

Senator Arlen Specter
Senate Judiciary Committee
Suite SD-224
Dirksen Senate Office Building
Washington, D.C.

Dear Senator Specter,

This letter concerns the Judiciary Committee's investigation into the Justice Department's handling of white collar crime. This inquiry is long overdue and undoubtedly will turn up all kinds of illegal actions.

The obvious problems in a matter involving Sun Company in which I have been involved for several years now were brought to the attention of your committee some 18 months ago. After much back and forth your Mr. Cannon suggested that the matter be summarized for the DOJ Office of Professional Responsibility which was done. I met with these people a few months later in June of '84 and laid out chapter and verse of the entire matter. They embarked on an investigation that is still ongoing some 15/16 months later. I now understand that their report will be made in the next few weeks. In the meantime through information obtained under the Freedom of Information Act and otherwise it developed that all sorts of strange antics had occurred.

Blatantly false memos turned up in DOJ Fraud Section files authoritatively.identifying certain events that never occurred. An FBI investigation that was solemnly cited by high Justice Department officials turned out to be non-existent and evidently was nothing more than a figment of an active imagination. One division of the SEC carried on a nine month inquiry into a \$236MM book cooking matter that now appears to have had no purpose other than whitewashing the book cooking matter and covering up the ludicrous decision of a sister SEC division that the \$236 million was immaterial in the first place. Attempts to have this oddball sequence-of events reviewed and sorted out by senior SEC officials were met either by stonewalling or simply waiving the applicable published 'rules and regs. When this obvious ploy was brought to their attention the high SEC executives involved ignored the whole matter and simply stonewalled. Many other anomalies, inconsistencies and strange antics not commensurate with dispensing justice can be cited. In general most of this has been brought to the attention of OPR/DOJ and I presume will be dealt with appropriately in their upcoming report.

I have little doubt that the facts in this matter will ultimately come out essentially because the whole situation is so rank. However, any system of justice that requires some four years to get to the bottom of such an obviously appalling situation is plainly inadequate.

In my view the single most insidious factor that contributes to this deplorable state of affairs is the ability of public servants to suppress or delay the availability of relevant information. The time parameters in the present DOJ handling of the Freedom of Information Act and the Privacy Act are so out of kilter that all kinds of undesirable practices are generated. One concludes that the intent of the Congress in encouraging an open society is being intentionally frustrated by the bureaucrats involved.

The purpose of this letter is simply to identify yet another instance of white collar crime involving hundreds of millions of dollars that has been handled in slapdash fashion by the law enforcement authorities.

Very truly yours,

Paul E. Atkinson

cc: David Bobzien, OPR/DOJ

PAUL E. ATKINSON
[illegible]
PHILA. PA. 19106

MEMO TO FILE

DATE: January 30, 1986

SUBJECT: Sun Company Update

Sun Company engaged in material illegal shenanigans relating to the handling of their shipbuilding subsidiary a few years ago. These monkey shines involved millions of dollars and affected thousands of people. When questions regarding their actions were raised, a full blown coverup evolved ultimately extending to the high levels of our major law enforcement agencies. The conspiracy and obstruction of justice implications now look to involve some 10/20 top Sun and government officials.

As one would expect in a matter of such magnitude, many small and not so small anomalies and inconsistencies began to surface. The whole ball of wax was summarized almost two years ago for the Office of Professional Responsibility of the Department of Justice as suggested by the staff of the Senate Judiciary Committee. The House Judiciary Committee staff concurred with the common sense of this approach. The OPR/DOJ investigation has now stretched out to some 20 months and presumably their report is due momentarily.

The charter of OPR/DOJ (established post Watergate) appears to be to review alleged irregularities within DOJ and refer the matter at hand either to the department concerned or if that is inappropriate, to one of the four senior DOJ officials, presumably with a view of establishing an independent task force to deal objectively with the matter at hand. Hopefully, the ability of the Office to choose whichever top Department official they consider "appropriate" will avoid the insidious breakdown of justice that occurred during the Watergate period under the Nixon/Mitchell regime. Whether or not this is a sound concept should be amply demonstrated in this case since the facts plainly indicate a major conspiracy of one sort or another existed.

At this point, two other areas each with the potential of collapsing the whole house of cards are currently being pursued.

First, plainly false (now acknowledged by DOJ attorneys) information relating to my activities in this matter has now surfaced in official Justice Department files. The Privacy Act clearly prohibits this nefarious practice and provides a method of amending the bogus documents to identify a true state of affairs. A request to amend this patently false material forthwith has been sidetracked by the aforementioned 20 month OPR/DOJ investigation, and an appeal has evidently been lumped into the interminable FOIA queue that currently exists in DOJ. A narrow lawsuit seeking amendment of the false records and damages against the U.S. as provided in the Privacy Act will be filed shortly.

Second, the original Sun hijinks included book cooking to the tune of some $200MM which required certification by public accountants. Since the sham figures were indeed duly certified, we have requested that the CPA licenses to practice in Pennsylvania of those involved be revoked. For who knows what reason, this simple matter has been swept under the rug for more than a year now. We are currently seeking a public explanation of the reasons for the delay, identification of who is attempting to quash the matter, a public hearing and other related things. These matters are currently on the front burner.

There is little real chance that all of the foregoing can be kept under wraps since the pertinent facts are now available to anyone who chooses to look. What else may underly the oddball behavior of these huge financial entities and may be exposed in the purging process is anyone's guess. In any event the facts that have already surfaced are clearly sufficient to identify the main thrust of the fiasco.

The most shocking thing that comes across in this whole matter is the realization that white collar criminals can and do breach our law enforcement system from the inside. Reasonable solutions to this insidious problem are not readily apparent. Unfortunately, in the case of public servants, it appears that getting along is dependent in large degree to going along.

One of the more glaring situations that needs immediate attention is the current DOJ handling of the FOIA and the Privacy Act. Present administrative practice effectively negates the provisions of these two important Acts. Of all the departments in Government, DOJ should be the leader in adhering to the spirit and letter of these laws.

U.S. Department of Justice

Office of Professional Responsibility

Washington, D.C. 20530

MAR 6 1986

Mr. Paul E. Atkinson
118 Pine Street
Philadelphia, Pennsylvania 19106

Dear Mr. Atkinson:

We have completed our investigation into allegations of misconduct by employees of the Justice Department which you reported to this Office in connection with your efforts to persuade the Department to act upon your allegations of white collar crime involving the Sun Company. We found your allegations of employee misconduct to be without merit.

Based on our investigation, which included interviews of employees of the FBI, the U.S. Attorney's Office in Philadelphia, the Securities and Exchange Commission, and the Department of Justice in Washington, as well as a review of pertinent documents, we determined that your initial allegations concerning the Sun Company had been investigated by the SEC and that, upon inquiry by the U.S. Attorney's Office in Philadelphia, the results were communicated by the SEC to that Office. The U.S. Attorney's Office acted reasonably in relying on the statements made by the SEC regarding its findings. Because of the information it received from the SEC and conversations you had with an FBI agent and an Assistant U.S. Attorney, the U.S. Attorney's Office determined that there existed no evidence of criminality and that it would take no further action on your complaint. The U.S. Attorney is accorded broad discretion in determining whether information provided by an individual warrants further investigation by federal law enforcement agencies. We believe that, in this case, the U.S. Attorney's Office acted properly and within the bounds of that discretion.

Similarly, we found nothing improper in the conduct of the employeees of the Fraud Section and the Criminal Division to whom you, in effect, appealed the U.S. Attorney's decision to take no further action and who decided not to second-guess that decision. Our assessment includes our evaluation of the significance of two Fraud Section memoranda which you claimed confirms the existence of a "huge hoax." Those memoranda, in describing what had gone on at the U.S. Attorney's Office in Philadelphia, incorrectly stated that you had met with the Assistant U.S. Attorney with whom you had been dealing principally and other assistants in the Office. In fact, to be correct, the memoranda should have stated that all of your contacts with that Office were by telephone. The incorrect statements resulted from a misunderstanding on the part of the employee gathering the information from the U.S. Attorney's Office for the Department in Washington. That mistaken information had no bearing on the initial decision of the Philadelphia U.S. Attorney's Office. Further, the correct information, had it been known to the Fraud Section and the Criminal Division when it was assessing the position of the U.S. Attorney's Office would not, in our opinion, have changed the Department's decision to defer to the judgment of the U.S. Attorney.

We appreciate your cooperation during the course of this matter and consider it closed.

Sincerely,

Michael E. Shaheen Jr.
Counsel

cc: Senator Arlen Specter

PAUL E. ATKINSON
118 PINE STREET
PHILA., PA 19106

March 21, 1986

Peter S. Rodino, Chairman
House Judiciary Committee
Suite 2137
Rayburn House Office Building
Washington, DC 20515

Dear Mr. Rodino,

Further to my letter of January 30, 1986 responding to yours of November 5, 1985 you will find enclosed a copy of the findings of the U.S. Justice Department after a twenty one month investigation into grave allegations of securities fraud and obstruction of justice by Sun Company and the various law enforcement agencies involved.

The more one thinks about it, the more astonishing the OPR/DOJ letter becomes. It almost appears that the findings were purposely written to be overturned. Even a casual inquiry by congressional staff people will identify the underlying facts which will inevitably lead to this result. Plainly, a more searching inquiry in the courts will uncover still more contradictions which have surfaced periodically in other areas unquestionably leading to reversal of the Justice Department actions. Why this strange course is being pursued is not clear.

Turning to the findings themselves, three areas look dubious - the time implications, the scope of the findings compared with the allegations, and the nature of the underlying philosophy that permeates the decision.

The philosophy underlying the findings looks to center on the following reasoning: - 1. admittedly erroneous factual information in DOJ files is somehow not significant; 2. even if decision makers up the line had access to accurate rather than spurious information they would have decided the same way; and 3. prosecutors have wide discretion anyway.

Regarding the time implications most people would agree that a twenty-one month investigation reaching findings based on this sort of reasoning serves no useful purpose, and shouldn't have been undertaken in the first place. Useless delay, statute of limitation obstacles, and other unnecessary problems result.

With respect to the scope of the findings compared with the scope of the allegations there is an obvious reliance on subjective generalities and a failure to come to grips with the specifics. Consequently the whole investigation is not responsive to the complaint raised in the first place.

In addition to the foregoing there have been simultaneously Privacy Act and Freedom of Information Act violations by DOJ and SEC involving outright fabrication of evidence and withholding of pertinent information on this same subject matter. These are in various stages of appeal. Legal action on these matters has been delayed pending receipt of the recent OPR/DOJ findings and will now go forward. Chapter and verse of two of the more egregious examples are enclosed for your information marked Appendix A and Appendix B.

Plainly, the combination of the actual fabrication of evidence, the withholding of pertinent information, and the subjective generalities that have marked the various SEC and DOJ findings have resulted in a submergence of obvious white collar crime.

My concern lies simply in having the subject matter handled on its merits in accordance with applicable law. As can be plainly seen this hasn't been the case to date. Your thoughtful advice or comments on any and all phases of this can of worms would be appreciated.

Very truly yours,

Paul E. Atkinson

cc: Representative Conyers
Michael Shaheen, Counsel, OPR/DOJ

PAUL E. ATKINSON
118 PINE STREET
PHILA. PA 19106

April 28, 1986

Michael Shaheen, Counsel
Office of Professional Responsibility
U.S. Department of Justice
10th and Constitution Avenue
Washington, D.C.

Dear Mr. Shaheen,

This letter constitutes a request under the Privacy Act to amend certain obviously false statements made in your letter of March 6, 1986 concerning a certain investigation of Sun Company.

Your letter states in part in paragraph 3 as follows: - "In fact, to be correct, the memoranda should have stated that all of your contacts with that Office were by telephone. The incorrect statements resulted from a misunderstanding on the part of the employee gathering information from the U.S. Attorney's Office for the Department in Washington." These two statements are inaccurate, incomplete and misleading. Please amend them to reflect the true facts identified below.

The two Department of Justice memos (obtained under the Freedom of Information Act) referred to in your statement are themselves plainly false and misleading. Not only is this the case with the non-existent meetings identified therein, but also several other fictitious events are recounted. A phantom FBI evaluation is inferred that was never made. At least two of the purported SEC investigations seem to be the figment of someone's imagination. Accusations of abusing SEC personnel bear no relation to the actual facts. One opinion is expressed as fact that a certain lawsuit was "unsuccessful", when court documents clearly identify the nature, scope and leisurely pace of an appalling SEC whitewash made to look like an investigation. Surely, any reasonable observer distinguishing success from failure in a lawsuit should recognize the main thrust of an action rather than the nits and lice of legal details.

Finally, the important and substantive contact with the Phila. U.S. Attorney's Office was made through several letters. Several of these were made available to your Mr. Bobzien in the early stages of your investigation. Your statement that all my contact with the Office was by telephone is simply false. Where this information came from and why you have indicated that this was so in the face of the written correspondence furnished to your people is beyond my understanding. As a matter of fact the telephone contact was insignificant, and confined to comments on the written material and my unsuccessful efforts to discuss the subject matter with the principals of the office.

Should you require substantiation of any of the factual information identified above I will be pleased to forward whatever detail is required.

Thank you in advance for your courtesy in correcting what seems to be a gross miscarriage of justice.

Very truly yours,

Paul E. Atkinson

cc: Rep. Peter Rodino
Rep. John Conyers
Sen. Strom Thurmond
Sen. Biden
Sen. Metzenbaum
Sen. Arlen Specter

U.S. Department of Justice

Executive Office for United States Attorneys
Office of Legal Services

Washington, D.C. 20530

Paul E. Atkinson
118 Pine Street
Philadelphia, Pennsylvania 19106

MAY 29 1986

Dear Mr. Atkinson:

This is in response to your letter dated May 28, 1985, in which you request pursuant to the Privacy Act, the amendment of all documents containing statements of meetings with individuals in the United States Attorneys Office in Phila., PA.

In compliance with the the Privacy Act, Title 5, United States Code, Section 552a, Subsection (c)(4), this will serve as official notice that the United States Attorneys' records described below have been amended in accordance with the authority provided by the National Archives and Records Administration.

All documents in the Executive Office for United States Attorneys' and the United States Attorneys Office for the Eastern District of Pennsylvania referring to your alleged meetings with individuals in the United States Attorneys Office in Philadelphia have been reviewed by this office. I have enclosed copies of all amended documents that pertain to the aforementioned subject.

Your request to amend statements made by Mr. Thomas Monahan of the Security & Exchange Commission is outside the authority to amend of the Executive Office for United States Attorneys. Therefore, you must submit your request to amend directly to the Security & Exchange Commission if you wish to pursue the amendment of that material.

This is the final action this office will take in this matter.

Sincerely,

Margaret A. Smith

Margaret A. Smith
Attorney-in-Charge
FOIA/PA Unit

PAUL E. ATKINSON
119 PINE STREET
PHILA. PA 19106

May 20, 1986

Attorney General Edwin Meese
U.S. Department of Justice
10th and Constitution Avenue
Washington, D.C.

Dear Attorney General Meese:

This letter constitutes a request under the Ethics in Government Act that you apply to the appropriate court to have an independent counsel appointed to investigate the activities of Sun Company related to their exit from shipbuilding a few years ago.

This action is necessary because the investigations conducted by high ranking federal officers has involved wrongdoing on a massive scale. In any matter of substantial magnitude where those involved attempt to perpetuate a false story many small and not so small inconsistencies tend to surface. These in turn lead to fringe problems of all kinds - widespread Privacy Act problems, illegal withholding of information, manufacturing of bogus evidence by those involved, unconscionable bureaucratic delays in routine state CPA license hearings, etc. Even a cursory review will reveal that all of these and more have occurred in this case.

The enclosed material identifies chapter and verse of the facts involved.

Your attention is particularly invited to the part played in this whole charade by the Justice Department's Office of Professional Responsibility. As can be seen, their decision following a twenty-one month investigation verges on the ludicrous, not even being factually correct. As one ponders the function of this office, it looks very much like they were used to bless the very type of corruption problems that the office was established to prevent.

Very truly yours,

Paul E. Atkinson

[illegible]
[illegible] out [illegible] the following
[illegible]
" " 5/15/85 [illegible] 1/31/84
" " 5/29/85
[illegible] 2/1/85
[illegible] 1/30/86
[illegible] 3/6/86
[illegible] 4/28/86

Memorandum to File:

Date: 4/2/85

SUBJECT: Sun Matter - A Current Assessment

The smoking guns that have now surfaced leave little room for doubt that Sun Company engaged in a huge hoax attendant to their exit from shipbuilding a few years ago. More importantly, the implications of the apparent perversions of our justice system are bone chilling. The whole fiasco is replete with false and contradictory statements, bogus financial figures running into hundreds of millions of dollars, backdated and disappearing memos, counterfeit evidence, phantom FBI evaluations and the like.

These illegal shenanigans have resulted in severe damages to many people. When all the suppressed information eventually comes out I would guess that Sun and/or Glenmede will be legally required to compensate those injured to the tune of tens of millions of dollars.

Ominously, the original SEC investigation of the whole matter now looks more and more like someone at a high level arranged a perfunctory nine month investigation to cool the whole thing and then tried to drop the matter from sight explaining away lack of action with the usual bureaucratic double talk. Several appeals of this strange state of affairs were made in an attempt to understand how the whole matter could possibly be as indicated. These appeals were simply stonewalled by neither acknowledging nor answering them. Interestingly, the Director of the Enforcement Division of the SEC at that time to whom the appeals were addressed was John Fedders. According to press reports his stonewalling of these appeals coincided timewise with the peak period of the wifebeating and financial troubles that caused his recent resignation.

Becoming suspicious of the secretive stonewalling of both Sun and the SEC, I filed a lawsuit to compel disclosure of the nature and scope of the SEC investigation. The resulting material that was exposed was appalling and caused me to lodge formal complaints against Sun with the U.S. Attorney in Phila. alleging criminal violations of law. Among other things the finger was pointed at the SEC investigation.

There then ensued a bizarre series of events in the U.S. Dept. of Justice that had to be seen to be believed. Suffice it to say in retrospect that the whole episode looks like the most callous and arrogant attempt to prostitute our law enforcement system since John Mitchell's antics involving the Watergate Affair.
It now develops that there were blatantly false internal Justice Dept. memos that identify simple facts like meetings with prosecutors and FBI evaluations that never occurred. Whether one DOJ Attorney is still flatly contradicting the other as to who is responsible for these false memos, as indicated in the enclosed letter to the OPR people,

I don't know. However, I'm sure this simple matter can be resolved and perhaps already has been.

Whatever the genesis of the false memos, the incredible several month period that followed the filing of my complaint with the Justice Dept. was even more peculiar. After what seemed to me to be an out of order telephone conversation between the DOJ and SEC concerning the questionable SEC investigation, the whole matter was dropped and disappeared into the depths of the Justice Dept.

There then ensued an incredible appeal process that started with the Phila. U.S. Attorney's office and continued through the several levels of the chain of command finally reaching the Asst. Attorney General in charge of the Criminal Division in Washington. All these high Justice Dept. officials at every stage (some seven in all) of the appeal process either simply stonewalled by not responding or identified the same false information as true despite my strong protestations to the contrary. Why anyone would hang their hat so vehemently on the existence or nonexistence of meetings, for example, that can be readily verified by any number of elementary means is beyond my comprehension. My current guess is that the facts will ultimately show that the abuse of prosecutorial discretion was so gross that some or all of these people will wind up being prosecuted for obstruction of justice.

In any event after several months of back and forth with Congressional committees, assorted politicos, and others, chapter and verse of the whole matter was spelled out to the office of Professional Responsibility of DOJ. They agreed that it was indeed strange that a citizen who thought the law had been broken could not meet with those entrusted to enforce those very laws to discuss simple disputed facts, and decided to review the matter. Their active and ongoing investigation is now in its tenth month.

In the meantime, some ten smoking guns plainly indicating deception and/or malfeasance of one kind or another have now surfaced. About twenty more items look fishy and may or may not prove as flagrant and contradictory as the initial batch. Most of this latter group involve the Freedom of Information Act (FOIA) data from the Phila. U.S. Attorney's office which has been suppressed for more than a year now (some 10 months in Phila., 2 months in Washington) despite the ten day disclosure requirement of the Act. The items that have surfaced to date generally reflect the difficulties that one would expect to be encountered by those trying to keep a complex false story consistent. The old saying about tangled webs is right on the money.

SEC General Counsel Goelzer (the designated Agency Ethics official) is currently reviewing my several page letter indicating my view that the whole SEC performance was a huge hoax. This encompasses the original SEC Corporation Finance and Enforcement Division's actions, the Fedders stonewalling fiasco, and what looks to me like another perfunctory investigation of the whole, this time a several page pitch by the SEC Ethics Counsel that looks so dubious to me that I have mentally catalogued it as a smoking gun.

The Office of Govt. Ethics after discussing the matter with the Justice Dept. investigators has declined to become involved at this time quite properly citing the active Justice Dept. investigation. This Agency is not an investigatory agency but is affirmatively responsible for the implementation of the Ethics in Govt. Act. Obviously, this law has been ineffective in this case and some sort of action needs to be taken. In my view at least two simple actions should be taken that would go a long way toward correcting things.

1. Public servants should be required to answer their mail.
2. The Justice Dept. should be required to obey the FOIA in some reasonable time frame.

The Congressional subcommittees having jurisdiction over the Ethics in Govt. Act have been alerted and are waiting in the wings.

Three other items each having the potential of bringing about the collapse of the whole house of cards are also on the active docket.

First, I have requested that the State Accounting Licensing Board revoke Coopers and Lybrand's CPA license to practice in view of their certification of the obviously flaky Sun material. I met with a state investigator and supplied pertinent information. The date for a public hearing has not yet been set, but I would expect it to be soon.

Second, in connection with the false DOJ memos I have asked the U.S. Attorney General under the Privacy Act to amend these and any other similar bogus documents in DOJ files to reflect an accurate state of affairs. The Criminal Division, DOJ, Privacy Act Attorney has called OPR, confirmed the open investigation, and indicated he will set about to correct the record.

Third, I am seriously considering disbarment proceedings against both AUSA Glazer and Asst Regional Administrator Monahan.

The foregoing is my best assessment of the current situation. What may take place from here on in, is anybody's guess.

P.E.A.

PEA:mp

PAUL E. ATKINSON
118 PINE STREET
PHILA. PA 19106

June 5, 1986

Ms. Margaret A. Smith
Attorney-in-Charge
FOIA/PA Unit
Office of Legal Services
Executive Office for U.S. Attorneys
U.S. Department of Justice
10th and Constitution Avenue
Washington, D.C. 20530

Dear Ms. Smith:

This will acknowledge receipt of your May 29, 1986 letter enclosing certain documents you have now amended allegedly in accordance with my request of May 28, 1985 under the Privacy Act. My letter did not request "the amendment of all documents containing statements of meetings with individuals in the United States Attorney's Office in Philadelphia, PA" as your letter indicates. A far broader and more comprehensive series of amendments of many documents was requested.

My letter identifies in some detail one possible approach to what looks to me to be an enormous problem. If some other approach makes sense and accomplishes the basic intent of the Privacy Act, I would have no objection, but the bare amending of memos to reflect only a portion of the inaccuracies hardly does this.

It may be helpful to go over the implications of one of the amended records in some detail in order to point out the nature of the problem. Please refer to AUSA Glazer's letter dated January 31, 1984 to Senator Specter. Your amendment simply deletes the latter portion of the next to the last sentence on the first page that originally read "I might add that Mr. Atkinson was not satisfied with my response and did contact other Assistant U.S. Attorneys in Philadelphia."

The deletion is proper since the latter part of the statement is simply false. However, the problem that arises is that the following sentence (i.e., the last sentence on the page), identifies a conclusion that could reasonably follow if the previous statement were true. This statement is obviously false however since no meetings or discussions of the subject matter ever took place with any other Assistant U.S. Attorneys. Plainly, this creates an impression that certain things took place that did not, and is contrary to the main thrust of the Privacy Act.

There are other problem areas with this document. Your attention is invited to the actual facts surrounding this letter as set forth in detail in my internal memo dated May 8, 1985, a copy of which was supplied to you previously. If further backup factual information is required to assemble a suitable amendment, I will be glad to supply same.

The accounting section of the Privacy Act to which you refer in your second paragraph requires informing others of corrective action you have taken or the notation of a dispute. It would be helpful to identify the scope and character of whatever action you have taken or intend to take in this area.

Regarding the documents you have reviewed, the scope of those should be expanded in light of my comments above and my earlier May 28, 1985 letter. It may be that my memos of April 2, May 8, and May 28, 1985 will prove helpful in your review since they generally identify the actual facts that took place.

Turning to the other amended documents you enclosed with your letter, the Fraud Section memos dated February 16, 1985 and March 7, 1985 should be further amended to reflect the true facts which are recited regarding those memos in the third paragraph of my letter (enclosed) to Mr. Shaheen of OPR.

The LaBrum/Nellor letter dated February 5, 1985 is not one with which I am familiar. In view of this, I would appreciate a copy of the original letter prior to amendment. It would also be helpful to identify the documents referred to as numbers one through five that originated in the U.S. Attorney's Office in Philadelphia that are identified in this letter.

With respect to your statement regarding amending SEC statements and the authority to amend, of the Executive Office of U.S. Attorneys, it would be helpful to understand the basis for this. If the records at issue are say, memos of the telephone conversations between AUSAs and Securities and Exchange officials that are made by the AUSAs it is difficult to see how the SEC could extend their amending jurisdiction to records maintained by DOJ. However, if false statements are recorded from these phone calls, one would think that these must be subject to amendment under the Privacy Act. Your comments are invited.

Your statement in your last paragraph that your action is the final action your office will take in this matter is noted. There is no doubt that this whole matter is difficult and unwieldy, but I'm sure you will agree that any action that serves the intent and legal requirements of the Privacy Act can and must be taken. On the other hand, I have no objection to any sensible arrangement that has reasonable prospects of improving the time response of DOJ as required by the law of the land. I will call in a week or so to discuss this letter hopefully to the end that some sensible program can be established to expedite what has been an unconscionably long lengthy process.

Very truly yours,

Paul E. Atkinson

Enclosure: ATK/Shaheen Letter - 4/28/86

PAUL E. ATKINSON
119 PINE STREET
PHILA. PA 19106

August 6, 1986

348-2800

8/12/86
Called for Ms Kosik
She was not in - will
call tomorrow.

8/13/86
Called [illegible] [illegible] [illegible]
[illegible]. Left
message [illegible] called.

James J. West
U.S. Attorney
Middle District of Pennsylvania
Suite 309-Federal Building
Washington & Linden Streets
Scranton, PA 18501

Attention: Barbara Kosik, Assistant U.S. Attorney

Dear Mr. West:

This will acknowledge receipt of your letter dated July 23, 1986 indicating that "... it appears that this District does not have jurisdiction."

Enclosed for your information is a copy of testimony I have submitted to the State Board of Accountancy in connection with a certain Coopers and Lybrand license revocation matter.

Should these astonishing facts prove to be true as I believe them to be (and your own EOUSA Privacy Act people seem to agree) it is readily apparent that this Coopers and Lybrand episode is only a part of a much larger scam of national proportions. Many violations of Federal and State laws look to be involved.

It may be that the Accountancy Board actions and those of the Pennsylvania Attorney General will turn out to be bureaucratic bumbling, and not purposeful obstruction of justice as seems probable. However, given the patently oddball actions of both, and the widespread false and misleading information surrounding this whole ball of wax elsewhere it would seem premature to reach any firm conclusions before all the facts are in.

I would suggest that the matter be held open until reasonable conclusions based on all the facts can be made.

Very truly yours,

Paul E. Atkinson

U.S. Department of Justice

United States Attorney
Middle District of Pennsylvania

Suite 309-Federal Building
Washington & Linden Streets
Scranton, Pennsylvania 18501

717/348-2800
FTS/592-8301

August 11, 1986

Paul E. Atkinson
118 Pine Street
Philadelphia, PA 19106

Dear Mr. Atkinson:

Please be advised that this Office is in receipt of your letter dated August 6, 1986. The matter raised by you has been referred to the Federal Bureau of Investigation for whatever course of investigation action deemed appropriate.

Sincerely,

JAMES J. WEST
United States Attorney

Barbara L Kosik
BARBARA L. KOSIK
Assistant U.S. Attorney

JJW:BLK:meo

PAUL E. ATKINSON
118 PINE STREET
PHILA. PA 19106

September 5, 1986

William H. Webster, Director
Federal Bureau of Investigation
U.S. Department of Justice
J. Edgar Hoover Building
Washington, DC 20535

Dear Sir:

This letter concerns criminal conduct by several high SEC and Justice Department officials that has now come to light. Literally hundreds of spurious facts have now surfaced in connection with investigations of certain Sun Company activities related to their exit from shipbuilding a few years ago. Various phases of this matter are now pending before some dozen Federal, State and other bodies.

It has now become painfully evident to anyone who chooses to look that some six "investigations" of this Sun matter conducted by the SEC and the U.S. Department of Justice were not investigations at all, but merely sham inquiries made to look like investigations. Assistant U.S. Attorneys have actually fabricated evidence from thin air; SEC officials have arbitrarily waived their own published rules and regulations; phantom FBI evaluations that were never made have been repeatedly cited; non-existent meetings have been identified to be the source of bogus information; false and misleading information of all sorts abounds.

The Executive Office for U.S. Attorneys of the Justice Department has finally started amending some of these obviously false Government records under much Privacy Act prodding. Enclosed is EOUSA amending action as well as one of the more extreme examples of the false Government documents that required amending. Plainly, several hundred Government records will now have to be amended to reflect a true state of affairs.

One phase of this far reaching hoax has already played out in Harrisburg, PA resulting in a ludicrous license revocation episode before the State Accountancy Board being referred by the U.S. Attorney to the FBI. Enclosed is the U.S. Attorney's referral of the matter to the FBI. You may or may not find it appropriate to consolidate these facts into this broader obstruction of justice matter.

Copies of correspondence and pertinent Government records confirming the above can be supplied as required. Should this become necessary, I can usually be reached in the afternoon at (215) 922-7844, and will arrange accordingly.

Very truly yours,

Paul E. Atkinson

U.S. Department of Justice

United States Attorney
Middle District of Pennsylvania

Suite 309-Federal Building
Washington & Linden Streets
Scranton, Pennsylvania 18501

717/343-2800
FTS/592-8301

September 15, 1986

Paul E. Atkinson
118 Pine Street
Philadelphia, PA 19106

Dear Mr. Atkinson:

After careful review of all available materials, please be advised that no federal offense was committed by Coopers and Lybrand. Further, the licensing procedure and its enforcement are matters entrusted to the Commonwealth of Pennsylvania.

Sincerely,

JAMES J. WEST
United States Attorney

Barbara L. Kosik
BARBARA L. KOSIK
Assistant U.S. Attorney

JJW:BLK:meo

SEP 19 1986

Honorable Arlen Specter
United States Senate
Washington, D.C. 20510

Dear Senator Specter:

This is in further response to your letter of August 7, 1986, by which you forwarded to the Department correspondence sent to Senator John Heinz by your constituent, Paul E. Atkinson. In his letter to Senator Heinz, Mr. Atkinson alleged that this Office was used by unspecified persons to thwart and delay his efforts to uncover what he describes as the "Sun fiasco." We categorically deny his ridiculous assertion.

Enclosed please find another copy of the letter we provided you on March 6, 1986, and again on April 16, 1986, which reported the results of our investigation to Mr. Atkinson. Once again, if you or your staff have any questions concerning this matter, please do not hesitate to contact us. Assistant Counsel David P. Bobzien has been assigned responsibility for this matter and can be reached at 212-633-2236 (FTS 633-2236).

Sincerely,

Signed Michael E. Shaheen Jr.

Michael E. Shaheen Jr.
Counsel

Enclosure

cc: Genise Lauer
Assistant to Senator Spector
Suite 9400, Federal Bldg.
600 Arch Street
Philadelphia, Pennsylvania 19106

JOHN HEINZ

ARLEN SPECTER

United States Senate

WASHINGTON, D.C. 20510

September 23, 1986

Mr. Paul E. Atkinson
118 Pine St.
Phila., Pennsylvania 19106

Dear Mr. Atkinson:

Enclosed please find the reply from the Department of Justice in response to my inquiry on your behalf.

I appreciate having the opportunity to be of assistance to you and hope that the information contained in this report is helpful. Please feel free to contact me again if I can be of any further assistance.

With best wishes,

Sincerely,

Arlen Specter

Arlen Specter

JH/AS/sgl
Enclosure

☐ SUITE 9400, FEDERAL BUILDING
600 ARCH STREET
PHILADELPHIA, PENNSYLVANIA 19106

☐ SUITE 2017, FEDERAL BUILDING
LIBERTY AVENUE AND GRANT STREET
PITTSBURGH, PENNSYLVANIA 15222

PAUL E. ATKINSON
118 PINE STREET
PHILA, PA 19106

11/2/87
Talked to Cindy Hartman
She received the letter and
sent it to Shaheen, OPR. I
indicated that this seemed crazy, etc.
She will return and call me
back shortly.

11/4/87
Called Cindy Hartman
She indicated that she had
talked to her supervisor
Had sent letter to OPR
Her actions were okay she
was sorry but that is the
way they operate. She
gave ~~her~~ me Bobzien's
name.
11/4/87 Decided to call Bobzien.
He was on phone - left msg

September 25, 1987

Attorney General Edwin Meese, III
U.S. Department of Justice
9th and Constitution
Washington, D.C. 20530

Dear Mr. Meese:

The enclosed letter to the Philadelphia U.S. Attorney identifies an obvious miscarriage of justice that occurred several years ago. Hopefully, the matter will now be reopened in light of the evidence that has now surfaced, and appropriate action to properly enforce the law will be taken.

The purpose of this letter is to seriously question the integrity of the appeal process that took place in this case. It is inconceivable that a matter involving facts as obvious and simple as they were in this case could be carried through some seven levels of the Justice Department without anyone penetrating the underlying facts.

Most troubling has been the obvious bad faith inherent in the investigation by the Office of Professional Responsibility. The final decision document following a long and desultory investigation is astonishing in its complete disregard of the underlying facts. It would appear that this Office has been used for the very partisan political manipulation it was established to avoid.

Incisive action should be taken to identify all of the underlying facts and remove those individuals from the appeal chain whose consideration of this whole matter has been less than objective.

Very truly yours,

Paul E. Atkinson

cc: Senate Judiciary Committee, all members
House Judiciary Committee, all members

PAUL E. ATKINSON
119 PINE STREET
PHILA. PA 19106

597-2556

September 25, 1987

U.S. Attorney
601 Market Street
Philadelphia, PA 19107

Dear Sir:

Enclosed is a memo of a telephone conversation in which Tom Monahan, then in charge of the Philadelphia SEC office evidently indicated to your investigating attorney, Gary Glazer, looking into certain Sun Company/SEC hokey pokey in response to my allegations, that several SEC investigations of the matters at issue had indeed been made. According to his memo, Glazer then determined to take no further action on my allegations choosing to rely instead on Monahan's statements which have now turned out to be false.

In retrospect, it seems odd that any AUSA would take the word of the very person accused of hanky panky in such a multi-million dollar matter without any reasonable substantiation. Plainly, the SEC files could have been readily reviewed, and, on finding that no such investigations had been made, it would be apparent that there was something strange afoot.

In any event, the Privacy Act officer of the SEC has now arranged to have the false Monahan remarks expunged from the record as indicated by the enclosed correspondence. It follows that a major miscarriage of justice has occurred, and a massive cover-up of who knows what dimensions has taken place. Plainly, the entire matter should be reopened and action taken as appropriate against those who violated the law.

Very truly yours,

Paul E. Atkinson

10/7/87 Martin - [illegible] his letter.

10/13/87
CALLED AGAIN. TALKED to [illegible]
MR. MARTIER WILL CALL
BACK.

10/29/87
Called again for Martin, left message
to have him call me.

12/17/87
Called again - Martin
was out to lunch - left
my # and requested that he call.

PAUL E. ATKINSON
110 PINE STREET
PHILA, PA 19106

597-2556

September 25, 1987

U.S. Attorney
601 Market Street
Philadelphia, PA 19107

Dear Sir:

Enclosed is a memo of a telephone conversation in which Tom Monahan, then in charge of the Philadelphia SEC office evidently indicated to your investigating attorney, Gary Glazer, looking into certain Sun Company/SEC hokey pokey in response to my allegations, that several SEC investigations of the matters at issue had indeed been made. According to his memo, Glazer then determined to take no further action on my allegations choosing to rely instead on Monahan's statements which have now turned out to be false.

In retrospect, it seems odd that any AUSA would take the word of the very person accused of hanky panky in such a multi-million dollar matter without any reasonable substantiation. Plainly, the SEC files could have been readily reviewed, and, on finding that no such investigations had been made, it would be apparent that there was something strange afoot.

In any event, the Privacy Act officer of the SEC has now arranged to have the false Monahan remarks expunged from the record as indicated by the enclosed correspondence. It follows that a major miscarriage of justice has occurred, and a massive cover-up of who knows what dimensions has taken place. Plainly, the entire matter should be reopened and action taken as appropriate against those who violated the law.

10/7/87 Martier - Duty Asst has letter.

Very truly yours,

10/13/87
CALLED AGAIN. Talked to secy
MR. MARTIER WILL CALL
BACK.

Paul E. Atkinson

10/29/87 Called again, left message for Martier,
to have him call me.

12/17/87
Called again - Martier
was out to lunch - left
my # and requested that he call.

Sunset Acres - Bath Pike
Bethlehem, PA 18017
December 4, 1987

The Honorable Patricia Schroeder
Rayburn House Office Building
Room 2410
Washington, DC 20515

Dear Congresswoman Schroeder:

I listened to your comments about Mr. Meese on Nightline's special, "The Charge Against Edwin Meese", with more than casual interest.

On February 29, 1984 your staff assistant, Mr. Nick Nokes, had a conversation with Attorney John McCullough of the Department of Justice, Fraud Section. Mr. McCullough gave Mr. Nokes false information affecting an inquiry on your behalf. That the information was false has recently been acknowledged by the Department of Justice and the Securities and Exchange Commission, following Privacy Act review at both agencies.

An origin of some of the false information was SEC Philadelphia Assistant Regional Administrator Thomas H. Monahan who provided false and misleading information to an Assistant U. S. Attorney looking into allegations of improper conduct by his SEC office.

Enclosure (A) is a Department of Justice memorandum recording a statement provided by Mr. Monahan to Assistant U. S. Attorney Gary S. Glazer in Philadelphia. Following Privacy Act review, the Department of Justice and the Securities and Exchange Commission have agreed to purge the entire second paragraph of enclosure (A).

Mr. McCullough's false information was received from Mr. Glazer, according to a Department of Justice memorandum recording the advice supplied to Mr. Nokes. That memorandum is enclosure (B). The Department of Justice under Privacy Act review has now purged certain of the false information traceable to Mr. Monahan in this memorandum written by Mr. McCullough.

In similar fashion other Congressional staff members have been deceived. For example, the false information from Mr. Monahan was verbally repeated to Senator Specter's aide Mr. Greg Farrell by Assistant U. S. Attorney Glazer and confirmed in writing by letter to Senator Specter on 1/31/84 by Mr. Glazer, who also forwarded enclosure (A) to the Senator. In addition to recently purging the second paragraph of enclosure (A), the Department of Justice has also amended Mr. Glazer's letter to Senator Specter. (Mr. Farrell is now a member of Congressman Inhofe's staff.)

Enclosure (C) was written during the time an active Office of Professional Responsibility (OPR) review was under way and before the Privacy Act corrections mentioned above occurred. The OPR review lasted 21 months. It whitewashed the entire matter and surprisingly included statements in its final report which were factually false. The OPR report issued 3/6/86. Correction of the false statements and the conclusion that all DOJ actions were proper were appealed first to OPR and then to Attorney General Meese. Attorney General Meese simply referred the appeal back to the Office of Professional Responsibility and thus dead ended the appeal process. In the meantime, through FOIA and Privacy Act actions, the Department of Justice has been amending false letters and memorandum some of which have been referred to in this letter.

I am certain that you recognize that OPR was formed after Watergate and that under the law a full fledged OPR investigation (such as a 21 month investigation) can not proceed until a preliminary investigation is conducted, reported to the Attorney General and then full investigation sanctioned by him. (If he is implicated in the preliminary investigation, the referral is to the Deputy Attorney General, and so forth through the top four DOJ officers.) It is reasonable to assume that the authorizing officer would review the final OPR report before it issues.

In the instant case I suspect that the authorizing officer was Attorney General Meese. The factual falsehoods in the final report are repudiated by DOJ's own Privacy Act actions.

The underlying subject matter involves false financial statements involving over $200 million. At this point, it is incontrovertible that civil servants at the state and federal level have been made parties to the cover up. At the very least Attorney General Meese has not been responsive to the appeal process. One has to ask, "Why?"

Enclosure (D) is another letter that you have previously seen. The OPR conclusion, including facts repudiated by DOJ itself, and Mr. Meese's improper handling of the appeal process, give great credence to Mr. Atkinson's concern that we are dealing "with an orchestrated political plan that has penetrated both the SEC and several parts of the Department of Justice."

While lying to members of Congress and deflecting oversight inquiries is deplorable, it is my firm belief that objective review will reveal complicity at the highest levels of the Administration.

I can be reached at (215) 868-4929 should you or your staff desire more detailed information.

Sincerely,

Eugene Schorsch

Eugene Schorsch

Enclosure (A): DOJ AUSA Glazer memorandum to file 11/16/83
(B): DOJ Fraud Section memorandum to file 3/7/84
(C): Atkinson/Rodino letter 9/27/85
(D): Atkinson/Thurmond & Rodino letter 7/6/84

April 5, 1988

Mr. Paul Atkinson
118 Pine Street
Philadelphia, PA 19106

Dear Paul:

I am writing to you concerning questions that remain about the 1980-81 write-down of Sun Shipbuilding and Dry Dock Co.

This letter confirms my previous verbal communication to you and Mr. Gene Schorsch the fact that while working for Senator Arlen Specter in 1983-84, I spoke to Mr. Tom Monahan of the SEC in Philadelphia who told me three investigations were conducted by SEC personnel into the Sun Shipbuilding matter. Mr. Monahan's comments were the basis of a letter I prepared on Feb 13, 1984, for Senator Specter's signature to you.

While preparing the Feb 13, 1984, letter, I also spoke to two Department of Justice attorneys who were familiar with the case. Unfortunately, I do not recall their names. However, they did confirm that the SEC had reported to the Justice Department that three separate investigations had been conducted into the Sun Shipbuilding case.

I trust this will help clarify my previous verbal communication to you. Please contact me at (202) 225-2211 if you have any questions.

Sincerely,

Greg Farrell

Greg A. Farrell
3313 Webley Ct.
Annandale, VA 22003

cc: Mr. Gene Schorsch
Sunset Acres - Bath Pike
Bethlehem, PA 18017

Enc

PAUL E. ATKINSON
118 PINE STREET
PHILA. PA 19106

U.S. Attorney
Middle District of Pennsylvania
P.O. Box 11754
Harrisburg, PA 17108

Dear Sir:

As can readily be seen from perusal of the enclosed correspondence with the Pennsylvania State Board of Accountancy, it appears almost certain that other than normal factors contributed to the strange result. What these factors may have been and whether they are legal or illegal is anybody's guess.

Correspondence with the Pennsylvania Attorney General on this matter is also enclosed for your information. You will note that the Attorney General's charitable trust group somehow wound up with the job of looking at this situation. This seems peculiar in that one does not normally connect charitable trust lawyers with white collar crime law enforcement.

This matter is being brought to your attention in view of the appalling circumstances surrounding the Sun Company matter outlined in Mr. Schorsch's enclosed letter dated 6/26/86 to Senator Simon. Since the nub of both this Coopers and Lybrand license revocation matter and the larger Sun episode is the same phantom $236mm item, it may or may not follow that the illegal obstruction of justice pattern now evident in the Sun Company case has any bearing on this Coopers and Lybrand matter.

Very truly yours,

Paul E. Atkinson

Paul E. Atkinson

cc: Eugene Schorsch ✓
PA Sen. Vincent Fumo
PA Rep. Babette Josephs

Sunset Acres - Bath Pike
Bethlehem, PA 18017
May 12, 1988

The Honorable William S. Sessions
Director, Federal Bureau of Investigation
J. Edgar Hoover Building
Washington, DC 20535

Dear Mr. Sessions:

I found myself in complete agreement with your recent comment to reporters that "... a lawyer's responsibility to adhere to the highest ethical standards, is very important." Your comments emphasized your belief that, although important for all lawyers, this is paramount for lawyers engaged in the enforcement of law.

I note from press reports that the FBI is now engaged in background investigation of Edward Dennis, recommended by Attorney General Meese to head the Criminal Division.

Enclosure (A) provides a summary in broad terms against which this letter is written.

The Philadelphia U.S. Attorney's office under Mr. Dennis has knowingly acted to obstruct justice in the Sun matter. Mr. Dennis has achieved public recognition for prosecution of corrupt judges and common criminals but he has aided and abetted white collar crime. Further, he has looked askance at improper enforcement actions by the Philadelphia SEC office and indeed, has become a party to such actions in a variety of ways, but most noticeably by the following.

He has refused to meet with a creditable informant as documented by enclosures (B) and (C). This, despite the very shocking allegations made to him by enclosures (D) and (E). The informant has never been permitted to meet with, and still has not met with, Mr. Dennis or anyone from his office.

His office has disseminated false information to deceive Congress. Examples can be furnished you which have been unearthed through the FOIA process. Following their revelation the Department of Justice has been forced through the Privacy Act to amend letters and files from Mr. Dennis' office.

It is possible that Mr. Dennis is a conspirator in this matter, but I think it more likely that his office has been manipulated from the Department of Justice (DOJ) in Washington. I believe that Sun has used political influence to effect the workings of the SEC and the Department of Justice. Included in that manipulation has been a 21 month investigation by the Office of Professional Responsibilty (OPR) which can be demonstrated to have been a sham and delaying tactic. The OPR appeals process was thwarted at the very top of DOJ by simply referring it back to OPR, thus dead ending any appeal.

Obviously, this matter involves more than just Mr. Dennis. Evidence that his office has denied justice, that it has circulated false information, and that it has deceived Congress are enough to warrant a through investigation of Mr. Dennis and that of his office in response to the original complaints and subsequent developments.

My purpose in writing is to offer additional information about Mr. Dennis to the end that your background investigation may be complete and that the conclusion be appropriate. Please advise if any actions are taken as a result of this communication.

Sincerely,

Eugene Schorsch

Eugene Schorsch

Enclosure (A): Summary 1/22/88
(B): Atkinson/U.S. Attorney Dennis letter 12/5/83
(C): Atkinson/U.S. Attorney Dennis letter 1/16/84
(D): Atkinson/U.S. Attorney Dennis letter 11/9/83
(E): Atkinson/U.S. Attorney Dennis letter 11/15/83

18TH DISTRICT
JEANETTE F. REIBMAN
711 LEHIGH STREET
EASTON, PA 18042
PHONE: (215) 258-2349

RESPOND TO
ROOM 458C, MAIN CAPITOL
SENATE POST OFFICE
HARRISBURG, PA 17120-0030
PHONE: (717) 787-4236

COMMITTEES
EDUCATION, MINORITY CHAIRMAN
CONSUMER PROTECTION AND PROFESSIONAL LICENSURE
LOCAL GOVERNMENT
AGING AND YOUTH

Senate of Pennsylvania

December 21, 1987

The Honorable Arlen Specter
United States Senate
331 Hart Senate Office Building
Washington, DC 20510

Dear Senator Specter:

Please find enclosed an impressive package of correspondence and documentation detailing the efforts of Messers Eugene Schorsch and Paul Atkinson in calling attention to their complaints of certain actions by the Sun Company.

The background subject of this material is a $236 million write down made by Sun Company in their 1980 Annual Report. An investigation is now underway in Harrisburg into alleged misconduct by Coopers and Lybrand in certifying that report. As of this date the investigation is still proceeding.

According to Mr. Schorsch the Securities and Exchange Commission has officially acknowledged that there were never three investigations as cited in your enclosed February 13, 1984 letter. Under Privacy Act actions, both the Department of Justice and the Securities and Exchange Commission have agreed that the second paragraph of the enclosed November 16, 1983 memorandum should be purged. Mr. Schorsch believes that the memorandum is one of numerous false records of the SEC and DOJ concerning this matter.

A letter allegedly containing false statements sent to you on January 31, 1984 is enclosed. (Enclosure C). Mr. Schorsch contends that the Department of Justice has officially acknowledged some of the false statements of that letter and have officially amended those. Mr. Schorsch demonstrates their amendment in Enclosure (D). He believes the inference of an FBI investigation remains incorrect.

Mr. Schorsch believes there are several areas which would benefit from your direct investigation and attention. One of them is a DOJ Office of Professional Responsibility report which he believes contains false statements. (Enclosure E). He contends that this was a "full scale" 21 month investigation, which under the law, could not have proceeded without the authorization of one of the top four officers of the Department of Justice. Enclosure (E) contains what Mr. Schorsch believes to be an inaccurate statement.

The memorandum should have stated that all of your contacts with that Office were by telephone. Mr. Schorsch contends that the OPR conclusion was based on representations that SEC and DOJ now admit are false.

On April 28, 1986, Mr. Atkinson requested amendment of the OPR report under the Privacy Act (Enclosure F). Mr. Atkinson received no reply, although, the matter has been brought directly to the attention of Attorney General Meese who merely referred the matter back to OPR. Your office was advised of this as shown by Enclosure (G) and your letter, Enclosure (H).

Messers Schorsch and Atkinson, who are particularly conversant with this matter, could meet with you in Pennsylvania or Washington to review the current situation. They urge an immediate and thorough review by the Senate Judiciary Committee.

Apparently Congressman John D. Dingell is currently reviewing this matter (Enclosure I). You may wish to contact his office.

I would appreciate your advising me of the results of your efforts in this matter.

Sincerely,

Jeanette F. Reibman

JEANETTE F. REIBMAN
State Senator

Enc.

cc: Congressman John D. Dingle

JFR/law

18TH DISTRICT
JEANETTE F. REIBMAN
711 LEHIGH STREET
EASTON, PA 18042
PHONE: (215) 258-2349

RESPOND TO:
ROOM 458C, MAIN CAPITOL
SENATE POST OFFICE
HARRISBURG, PA 17120-0030
PHONE: (717) 787-4236

Senate of Pennsylvania

COMMITTEES
EDUCATION, MINORITY CHAIRMAN
CONSUMER PROTECTION AND
PROFESSIONAL LICENSURE
LOCAL GOVERNMENT
AGING AND YOUTH

March 9, 1988

The Honorable Arlen Specter
United States Senator
United States Senate
331 Hart Building
Washington, DC 20510

Dear Senator Specter:

On December 17, 1987 I forwarded to you correspondence concerning the efforts of Messers Eugene Schorsch and Paul Atkinson regarding their complaints of actions by the Sun Shipbuilding and Dry Dock Company.

In my cover letter I attempted to outline a chronology of events and correspondence in this matter and suggested you contact Mr. Schorsch and/or Mr. Atkinson for specific details. I advised you that Congressman John D. Dingell of Michigan was reviewing the matter. Finally, I asked you to advise me of your efforts in this matter.

Mr. Schorsch has informed me that to date he has had no contact from your office, nor I have not received acknowledgment of a response to my letter of December 17, 1987.

I recognize the workload of a United States Senator and the myriad of issues with which you must deal, but I would appreciate your attention to this concern of our constituent.

I am enclosing a copy of my original correspondence for your reference.

Sincerely,

Jeanette

JEANETTE F. REIBMAN
State Senator

JFR/law

Sunset Acres - Bath Pike
Bethlehem, PA 18017
April 22, 1988

The Honorable Arlen Specter
303 Hart Senate Office Building
Washington, DC 20510

Dear Senator Specter:

I called your office on April 20 to inquire what you were going to do about Senator Reibman's letters to you of 12/27/87 and 3/9/88. I spoke with your Office Manager, Jay Batley. He indicated he would find out who was "handling that" and have them call me back.

I called again on April 22 but Mr. Batley was out of the office.

I think you can appreciate that the subject matter is not a routine matter and is one with which you have been personally acquainted. It appears to me that discussion is very much in order. I will be in Washington on April 26 and will contact your office again at that time.

Sincerely,

Eugene Schorsch
Eugene Schorsch

cc: Senator Jeanette F. Reibman

ARLEN SPECTER
PENNSYLVANIA

COMMITTEES
JUDICIARY
APPROPRIATIONS
VETERANS' AFFAIRS
INTELLIGENCE

United States Senate
WASHINGTON, DC 20510

April 20, 1988

Honorable David Ruder
Chairman
Securities and Exchange Commission
450 Fifth Street, NW
Washington, D.C. 20549

Dear Chairman Ruder:

I am writing on behalf of and at the request of Mr. Paul Atkinson. The information contained in this letter was provided to me by Mr. Atkinson.

I am advised that the SEC currently is conducting an investigation into alleged misconduct by the firm of Coopers and Lybrand in certifying the Sun Company's 1980 annual report. Mr. Atkinson has raised a number of questions about the status of the investigation. These concerns are outlined in the enclosed letter.

If appropriate, I request that you apprise Mr. Atkinson of the status of the SEC's investigation. Please respond directly to Mr. Atkinson and forward a copy of your correspondence to the attention of Justin Castillo of my staff.

Thank you for your attention to this important matter.

Sincerely,

Arlen Specter

AS/jc
Enclosure

ARLEN SPECTER
PENNSYLVANIA

COMMITTEES:
JUDICIARY
APPROPRIATIONS
VETERANS' AFFAIRS
INTELLIGENCE

United States Senate
WASHINGTON, DC 20510

Rec'd 4/28/88

April 20, 1988

Mr. Paul Atkinson
118 Pine Street
Philadelphia, PA 19106

Dear Mr. Atkinson:

Thank you for your communication regarding the SEC inquiry into the conduct of the Sun Company.

In an effort to be as helpful as possible regarding your request, I have written to Chairman David Ruder of the Securities and Exchange Commission regarding the status of the investigation. Enclosed is a copy of my letter.

I hope that this is helpful. Please let me know if I may be of additional assistance to you on this or any other matter of mutual concern.

Sincerely,

Arlen Specter

Arlen Specter

AS/jc
Enclosure

ARLEN SPECTER
PENNSYLVANIA

COMMITTEES
JUDICIARY
APPROPRIATIONS
VETERANS AFFAIRS
INTELLIGENCE

United States Senate
WASHINGTON, DC 20510

April 20, 1988

Honorable Jeanette F. Reibman
Senate of Pennsylvania
Commonwealth of Pennsylvania
Room 458C, Main Capitol
Senate Post Office
Harrisburg, PA 17120-0030

Mark - fyi

Dear Jeanette:

Thank you for your letter on behalf of Messrs. Eugene Schorsch and Paul Atkinson regarding the SEC inquiry into the conduct of the Sun Company.

I had responded to Mr. Atkinson on February 13. In an effort to be as helpful as possible regarding this matter, I have written to Chairman David Ruder of the Securities and Exchange Commission regarding the status of the investigation. Enclosed are copies of my letters to Mr. Ruder and Mr. Atkinson.

I hope that this is helpful. Please let me know if I may be of additional assistance to you on this or any other matter of mutual concern.

Sincerely,

Arlen Specter

Arlen Specter

AS/jc
Enclosure

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

OFFICE OF
THE CHAIRMAN

May 3, 1988

The Honorable Arlen Specter
United States Senate
Washington, D.C. 20510

Dear Senator Specter:

Thank you for your letter of April 20, 1988 enclosing a constituent request from Mr. Paul Atkinson. I have requested Daniel Goelzer, General Counsel of the Commission, to review this request and provide a prompt response.

If you have any questions about this matter, please feel free to contact me or have your staff contact Mr. Goelzer at (202) 272-3171.

Sincerely yours,

David S. Ruder

David S. Ruder
Chairman

cc: Daniel Goelzer

Sunset Acres - Bath Pike
Bethlehem, PA 18017
May 6, 1988

The Honorable Joseph R. Biden, Jr.
489 Russell Building
Washington, DC 20510

Dear Senator Biden:

Enclosure (A) provides a summary in broad terms against which this letter is written.

Press reports indicate that Attorney General Meese has sent to the White House his recommendation that Philadelphia U.S. Attorney Edward Dennis be appointed to head the Department of Justice's Criminal Division.

The Philadelphia U.S. Attorney's office under Mr. Dennis has knowingly acted to obstruct justice in the Sun matter. Mr. Dennis has achieved public notice for prosecution of corrupt judges and common criminals but he has aided and abetted white collar crime. Further, he has looked askance at improper enforcement actions by the Philadelphia SEC office and indeed, has become a party to such actions in a variety of ways, but most noticeably by the following.

He has refused to meet with a creditable informant in the matter. See enclosures (B) and (C).

His office has disseminated false information to deceive Congress. Examples can be furnished you which have been unearthed through the FOIA process. Following their revelation the Department of Justice has been forced through the Privacy Act process to amend letters and files from Mr. Dennis' office.

Regardless of one's feelings about Edwin Meese, his choice of Edward Dennis is particularly inappropriate. It can be documented that Edward Dennis has prevented fair audience by the justice system, that his office has knowingly circulated false information in an effort either to prevent disclosure of white collar crime, to prevent review of his office in connection thereof, or to prevent revelation of conspiracy by his office to cover up the white collar crime.

As recently as 9/25/87 Mr. Dennis' actions were brought directly to the attention of Mr. Meese and he has now chosen to recommend Mr. Dennis to head the Criminal Division.

I ask that you object to this appointment. For more information I can be reached at (215) 868-4929.

Yours truly,

Eugene Schorsch

Eugene Schorsch

Enclosure (A): Summary 1/22/88
(B): Atkinson/U.S. Attorney Dennis letter 12/5/83
(C): Atkinson/U.S Attorney Dennis letter 1/16/84

SUMMARY 1/22/88

In its 1980 Annual Report Sun Company claimed a vastly inflated writedown of $236 million for discontinued shipbuilding operations. Some $124 million additional was reserved for losses on shipbuilding contracts to be completed, making a pretax loss of $360 million for the year. This represented over 100 times the annual profits that had marked almost every year from World War II through the mid seventies, a span of some thirty years.

Sun Company's controlling shareholder is Glenmede Trust Company, manager of the Pew trusts and the second largest charitable trust in the nation, controlling assets exceeding $2.0 billion. Over many years Sun has contributed heavily to the Republican party. Several Directors of Glenmede also serve as Directors of Sun and the son-in-law of a longtime Glenmede Director is the President of Sun Company. The operations of Glenmede do not appear to be in accordance with charitable tax law.

In 1981, Paul E. Atkinson, a long time President of Sun's shipbuilding company, now retired, privately questioned first Sun Company and then Glenmede Trust about the $236 million writedown in the 1980 Annual Report. When answers were not forthcoming to satisfactorily explain the $236 million, Atkinson asked the Philadelphia office of the SEC to look into the bogus writedown.

An SEC investigation ensued which concluded that the writedown was correct. Amazed at the conclusion, Atkinson attempted to learn the rationale behind it. When information was not forthcoming, a Freedom of Information law suit was filed which revealed that the SEC investigation was not an investigation at all, but merely a preliminary inquiry that had been conducted under terms dictated by Sun Company. The law suit also revealed that the scope and nature of the SEC investigation was not appropriate to the matter under investigation.

The matter was appealed through the SEC hierarchy which sustained the Philadelphia office findings. Many irregularities arose in the process. Communications to the SEC Chairman and others aimed at resolving these many anomalies were ignored. The license revocation proceeding in Pennsylvania, discussed below, was brought to the attention of the SEC Chief Accountant requesting that Coopers & Lybrand be prohibited from practicing before the Commission. This matter has been stonewalled.

A formal complaint letter was filed with the Philadelphia U. S. Attorney in late 1983 alleging among other things, criminal conduct by the SEC. The Assistant U. S. Attorney assigned to the case called the SEC Philadelphia office and was given false information regarding both the extent of the SEC investigation and Atkinson's actions. The case was dropped by the Philadelphia U.S. Attorney. Efforts to understand this action were met with stonewalling.

The appeal through some seven levels of DOJ was characterized by false information, phantom FBI investigations, alleged meetings with prosecutors that were never held, and other similar happenings. This was capped by a perfunctory investigation by the Office of Professional Responsibility of DOJ, sustaining previous DOJ action, and causing a 21 month delay in the process.

In late 1984 a request was filed with the State Board of Accountancy to revoke the license of Coopers & Lybrand (Sun's auditor) to practice in Pennsylvania due to their certifying the $236 million item to be true when it was false. The State Board took no action until 1986, when, under prodding by Eugene Schorsch, a former Vice President of Sun's shipbuilding company, the Board's Prosecuting Attorney spent four months in an unsuccessful effort to obtain the Coopers & Lybrand 1980 work papers. Suddenly, in June 1986 the Board formally dismissed the complaint without any investigation at all. There followed a storm of protest, involvement of Governor Casey and others, and finally reopening of the case in April 1987. A consultant has now been retained to make a proper investigation. Presumably this long running matter, now over three years old, will be resolved in the near future.

Ominously, it would appear that the bald-faced political considerations that involved the state Republicans for more than 28 months may have now devolved on the Democrats. Stonewalling, unanswered letters and phone calls, lost documents and other similar delaying tactics have reached the point where the good faith of the Democrats in reopening this whole matter is now in substantial question.

Requests to amend certain of the inaccurate government records were filed under the Privacy Act. DOJ and SEC have now both acknowledged that several of the inaccurate facts should be purged from the record. In these cases their records have actually been formally amended. They can be compelled to amend the remainder if necessary.

Both headquarters and local offices of the FBI and DOJ are grappling with various phases of this matter. Unanswered letters regarding the strange actions of each are outstanding.

Complaints have been made to the Disciplinary Board of the Pennsylvania Supreme Court regarding false statements of lawyers since several of the admittedly inaccurate government records involve statements by lawyers. These have been turned aside by the Chief Disciplinary Counsel on grounds involving proof of intent. Since proof of intent requires substantial investigation the question arises, given the fact of false statements, as to whether a complainant or the Board should develop the detailed facts surrounding intent. The chairman of the Board is presently considering this overall problem.

The actions of Senators Specter and Heinz have been highly questionable. Repeated requests have been turned aside. Despite overwhelming evidence of Sun duplicity neither has chosen to come to grips with the facts. State Senator Reibman has written to Senator Specter identifying several of the problem areas. A reply is outstanding.

At the present time this matter is before some half dozen Congressional committees. Most advanced is action before the House Energy and Commerce Committee which has requested and now received the SEC reasoning in this matter.

PAUL E. ATKINSON
118 PINE STREET
PHILA., PA 19106

May 7, 1988

Senator Arlen Specter
Washington, D.C. 20510-3802

Dear Senator Specter,

This will acknowledge receipt of your letter dated Apr. 20, '88 with the attached letter from you to SEC Chairman Ruder of the same date.

These letters are troubling in the extreme. Requests specifically attributed to me did not occur. Facts have been fabricated that are not true. A fairy tale scenario has been created that doesn't remotely resemble the real picture.

As you know this matter involves serious allegations concerning false accounting by Sun Company to the tune of hundreds of millions of dollars affecting the lives of thousands of people. It now looks probable that several of our major law enforcement agencies have been improperly influenced to overlook the Sun irregularities.

Contrary to your specific assertions I have not requested your assistance in this matter, and did not request you to write to anyone on my behalf. This may have been appropriate several years ago when I did seek your assistance, but certainly it is not now. In addition, I did not furnish the information you specifically indicated I had provided in your letter to Mr. Ruder. Further, again contrary to your statement, there is no current SEC investigation of this Sun matter. In view of this your statement that, "Mr. Atkinson has raised a number of questions about the status of the investigation" would thus appear to have been deliberately fabricated for who knows what purpose.

This is not the first time in this long running Sun matter that you have actually disseminated false and misleading information. Your letter of 2/13/84 states in pertinent part, "Members of my staff have spent considerable time investigating this matter and have discussed the merit and findings of the three previous investigations conducted by the Securities and Exchange Commission (SEC)." Since the SEC themselves now admit that there was only one preliminary inquiry the deception inherent in your statement is appalling.

Even the remote possibility of a U.S. Senator placing the illegal interests of a large campaign contributor above those of thousands of his constituents is bone chilling. I would hope that you would unequivocally lay to rest any such concerns, and take an appropriate public position accordingly.

Very truly yours,

Paul E. Atkinson

PAUL E. ATKINSON
118 PINE STREET
PHILA. PA 19106

May 7, 1988

State Senator Jeanette F. Reibman
Senate Post Office
Harrisburg, PA 17120

Dear Senator Reibman,

The course Senator Specter seems to have chosen in this Sun matter is astonishing. His three letters dated Apr. 20, '88 are discussed below.

Senator Specter's letter to SEC Chairman Ruder.

The whole first paragraph indicating he is writing on my behalf and at my request, and that I supplied certain information is just not true.

His information that "the SEC currently is conducting an investigation into alleged misconduct by the firm of Coopers and Lybrand in certifying the Sun Company's 1980 annual report" is also wrong, perhaps being a figment of someone's imagination who has not taken the time and trouble to understand the facts. Obviously I could not have "raised a number of questions about the status of the investigation" when there is no investigation.

Senator Specter's letter to you

I have not received any correspondence on this subject from the Senator for several months, so that I'm at a loss to understand his statement that "I had responded to Mr. Atkinson on February 13."

Although it seems far fetched, it may be that the Senator is referring to a letter he did write more than four years ago dated Feb. 13, '84.

Senator Specter's letter to me

Contrary to the Senator's plain implication that I had communicated with him, I have not contacted him regarding the SEC inquiry into the conduct of Sun Company for more than a year.

Standing back and looking at this correspondence as a whole, the question arises as to why a U.S. Senator would come up with such a series of fabrications that are so far from the truth yet can readily be checked. We are continuing our efforts to get to the bottom of all this.

Your assistance to date has been most helpful. I would hope you will continue your efforts to the end that clean and capable government will emerge at all levels.

Very truly yours,

Paul E. Atkinson

ARLEN SPECTER
PENNSYLVANIA

COMMITTEES
JUDICIARY
APPROPRIATIONS
VETERANS' AFFAIRS
INTELLIGENCE

United States Senate
WASHINGTON, DC 20510

May 9, 1988

Mr. Paul E. Atkinson
118 Pine Street
Philadelphia, Pennsylvania 19106

Dear Mr. Atkinson:

I am enclosing a copy of an interim reply that I have just received from the United States Securities and Exchange Commission in response to my special interest in your problem. You may be assured that I will monitor this matter closely and advise you promptly upon receipt of any further information.

With best wishes,

Sincerely,

Arlen Specter

AS/jbd
Enclosure

PAUL E. ATKINSON
118 PINE STREET
PHILA. PA 19106

May 20, 1988

David S. Ruder, Chairman
U.S. Securities and Exchange Committee
Washington, DC 20549

Dear Mr. Ruder,

Your letter of May 3, '88 to Senator Arlen Specter indicated that his letter of Apr. 20, '88 to you enclosed a constituent request from me. Since I made no such request and this must be apparent from whatever was enclosed, I am at a loss to understand his motive in making such a misrepresentation.

If this were the only instance of this kind one could mark it down as an innocuous error and proceed to more important matters. However, two more of the Senator's recent communications concerning this long running Sun Co. matter reflect the same sort of misstatement of mundane facts raising the issue of intent. Further, this is not the first time that Senator Specter has made false statements in this Sun Co. matter. The enclosed letters from me to Senator Specter and State Senator Reibman both dated 5/7/88 identify the situation in more detail.

The aura of factual falsity and secrecy hanging over this entire matter is troubling in the extreme. You will recall that both the SEC and DOJ Privacy Act people have now amended some five Govt. records reflecting correction of material false statements by various high SEC and DOJ officials. Several other Govt. records identifying other false statements exist, and the Privacy Act people can be forced to amend these if necessary.

Under the circumstances this entire episode should be reopened and a proper investigation of all the facts made. Should this reveal improper actions, as surely looks to be the case, appropriate action against those involved should be taken.

Very truly yours,

Paul E. Atkinson

cc: Senator Arlen Specter
State Senator Jeanette Reibman
William Michael Kitzmiller (with enclosures)

PAUL E. ATKINSON
118 PINE STREET
PHILA. PA 19106

May 24, 1988

Howard T. Heflin, Chairman
Select Committee on Ethics
Hart Senate Office Building
Room SH-220
Washington, DC 20510

Dear Senator Heflin,

One of the more troubling hallmarks of the Reagan Administration has been the clever fabrication of facts and plausible disinformation that has emanated from North, Poindexter, Elliott Abrams and Deaver among others giving a totally false picture of what actually occurred. The use of backdating, mislabeling, outright lying and similar deceitful tactics to make things appear to be what they were not has been deplorable.

It now appears that Senator Arlen Specter has joined this sorry parade of artful dodgers by adopting similar tactics. The enclosed correspondence among Senator Specter, Pennsylvania State Senator Jeanette Reibman, SEC Chairman Ruder and me speaks for itself.

One expects that a U.S. Senator will conduct his affairs with the truth, dignity and decorum that is inherent in his office. It is appalling to find the wholesale misrepresentation of facts readily apparent in his several letters.

Under the circumstances I request an investigation of Senator Specter's involvement and actions in the entire Sun Company matter, together with whatever disciplinary action by the Senate the Committee finds to be appropriate.

Very truly yours,

Paul E. Atkinson

cc: Senator Arlen Specter

Reibman/Specter	3/9/88
Specter/Reibman	4/20/88
Specter/Atkinson	4/20/88
Specter/Ruder	4/20/88
Atk/Specter	5/7/88
Atk/Reibman	5/7/88
Specter/Atk	5/9/88
Ruder/Specter	5/3/88
Atk/Ruder	5/20/88

PAUL E. ATKINSON
119 PINE STREET
PHILA. PA 19106

July 21, 1988

Francis A. Keating 2nd,
Acting Associate Attorney General
Department of Justice
Washington, DC 20530

Dear Mr. Keating,

There has been much written about turmoil in the Justice Department resulting from top level defections and the peccadilloes of Attorney General Meese. The press has reported that top Justice Department officials have minimized this problem and indicated that the Department is operating normally and effectively.

I don't see this to be the case at all. My views are set out in the enclosed letter to Ms. Huffman of the Senate Judiciary Committee staff. As can be seen the issues are wide ranging and grave indeed.

You will note that I submitted certain criminal allegations to the new Philadelphia U.S. Attorney more than a week ago. You will further note that I am concerned in view of the obstruction of justice previously encountered that a fair and impartial review of this matter will not be made. For whatever reason I have heard nothing to date from the U.S. Attorney which seems peculiar in view of the gravity of the subject matter. This would seem to contradict the protestations that all is normal and indicate that this matter has again been placed on hold for who knows what reason.

Your early attention to this important matter would be appreciated.

Very truly yours,

Paul E. Atkinson

Paul E. Atkinson

cc: Ms. Diana Huffman, U.S. Senate Committee on the Judiciary ✓

Senator **HEFLIN**. Does anybody have any other questions that they want to ask?

Senator **SPECTER**. Yes, Mr. Chairman. I would like to ask some questions.

Mr. Atkinson, you have just raised my name on a complaint that my office has not responded adequately to your requests to have this matter investigated. Is that correct?

Mr. **ATKINSON**. No, that is not correct at all, Senator.

Senator **SPECTER**. Well, the only contact that anybody from my office has had with you—first of all, you and I have never discussed this matter.

Mr. **ATKINSON**. That is correct.

Senator **SPECTER**. Okay. Now, the only contact there has been between you and members of my office has been your request to my office as one of your United States Senators to find out what went on with the SEC and what went on with Sun, is that correct?

Mr. **ATKINSON**. No, that is not true, Senator. Would you like me to tell you what I think is true?

Senator **SPECTER**. Yes.

Mr. **ATKINSON**. I laid all of this out several years ago to your people, and your people went and talked with the Justice Department. One of your fellows talked with the Justice Department. Greg Farrell is the fellow.

Senator **SPECTER**. The point that I am raising is that——

Mr. **ATKINSON**. Well, let me finish my point.

Senator **SPECTER**. Let me focus the question, please.

The only contact any of my employees have had has been to respond to your coming to my office and asking our office to help find out what happened with Sun Shipping and with Librand-Ross and with the SEC.

Mr. **ATKINSON**. That is not true, Senator.

Senator **SPECTER**. Well, does my office——

Mr. **ATKINSON**. This has——

Senator **SPECTER**. Excuse me. Does my office have any independent contact with this matter?

Mr. **ATKINSON**. Yes. You and I have had correspondence. You and I have had some 30 or 40 letters going back and forth that document all of this over this whole period of years.

Senator **SPECTER**. You came to my office asking for help to find out what the facts were.

Mr. **ATKINSON**. I am not aware of that.

Senator **SPECTER**. Well, all right. Take it up as you would. What did you come to my office for?

Mr. **ATKINSON**. I came to your office to see Mr.—in giving you a little of the history of this, Senator Reibman, Pennsylvania State Senator Reibman, Jeanette Reibman of Lehigh Valley, wrote you a letter and said: Please, Senator Specter, tell me all about all these anomalies. They looked at these particular documents that we are talking about that are corrected by the Department of Justice themselves.

The Senator wrote you that letter on December the something or other of last year. Nothing came out of your office, and the word came out to follow it up in March. At that time, a month later, when we had got nothing out of your office, I went to see what goes, what happens, why is Senator Specter not responding.

Senator SPECTER. You went to Senator Jeanette Reibman to ask her to help you find out what my office had done.

Mr. ATKINSON. No, that is not true, Senator. I have been to Senator Reibman many times.

Senator SPECTER. Did you go to Senator Reibman concerning this matter?

Mr. ATKINSON. Sure.

Senator SPECTER. And what request did you make of her?

Mr. ATKINSON. To get the facts. Let us get the facts, and here they are. Here is the Justice Department themselves. They are finding out what the facts are, and other people are saying those facts are not true.

Senator SPECTER. And when did you first contact my office?

Mr. ATKINSON. As I say, this went on for—there are 30 or 50 letters between you and me and related things about this.

Senator SPECTER. Well, you first contacted my office about 1983 or 1984?

Mr. ATKINSON. Or perhaps prior to that, yes.

Senator SPECTER. What did you ask Mr. Farrell? You have mentioned him. He used to be an employee in my office. What did you ask——

Mr. ATKINSON. Well, at that time, there was an investigation being carried out by the Office of Professional Responsibility. And I laid out for the Justice Department Office of Responsibility the same thing I laid out for your people. Then your people——

Senator SPECTER. What was the investigation by the Office of Professional Responsibility about?

Mr. ATKINSON. What was it about? It was about all of this same subject matter.

Senator SPECTER. Well, what is the subject matter?

Mr. ATKINSON. Well, I thought this was a hearing on Mr. Dennis, and I am not prepared to talk on all of that.

Senator SPECTER. Well, it was a hearing on Mr. Dennis until you mentioned my name.

Now, this matter has been investigated by a lot of agencies. As I——

Mr. ATKINSON. It was the Iran-Contra—there were a lot of matters.

Senator SPECTER. As I understand the facts, you came to my office asking for some help.

Mr. ATKINSON. That is not true.

Senator SPECTER. We went to the SEC. You have been to the Dingell committee. You have been to the U.S. attorney. You have been to the Department of Justice. There is a thick file. Everybody has looked into the matter and found it to be without merit. Now——

Mr. ATKINSON. What I said, Senator——

Senator SPECTER. Now, you have——

Mr. ATKINSON. I have said that——

Senator SPECTER. Let us get down to the facts. What did you——

Mr. ATKINSON. Well, let us get down to the facts, and let us stop ducking away from the facts.

Senator SPECTER. Fine.

Mr. **Atkinson**. Let us tackle the facts.

Senator **Specter**. Let us go.

Mr. **Atkinson**. Okay. There are 50 attempts to talk to the U.S. attorney. No answer in one way or another—letters, telephone calls—over a 2-month period. This is not right. I hold with the——

Senator **Specter**. What did you want the U.S. attorney to do?

Mr. **Atkinson**. I wanted the U.S. attorney to prosecute the SEC and the people who had any problems in this situation.

Senator **Specter**. What did you want the U.S. attorney to prosecute the SEC for?

Mr. **Atkinson**. Well, there is a whole batch of 200 different letters on this, and I will be glad to go into that with you.

Senator **Specter**. Right now.

Mr. **Atkinson**. What did I want the U.S. attorney——

Senator **Specter**. That is the question.

Mr. **Atkinson**. What is the question?

Senator **Specter**. What did you want the U.S. attorney to prosecute the SEC for?

Mr. **Atkinson**. Well, if you would like——

Senator **Specter**. You have made some very serious charges here, Mr. Atkinson. So let us get down to brass tacks. What did you want the U.S. attorney to prosecute the Securities and Exchange Commission for?

Mr. **Atkinson**. Would you like me to read my original complaint?

Senator **Specter**. You have charged Mr. Dennis with obstruction of justice; you have charged him with false information.

Mr. **Atkinson**. I have not charged him personally.

Senator **Specter**. Yes, you did. You have your statement here.

Mr. **Atkinson**. It says the Philadelphia U.S. Attorney's Office.

Senator **Specter**. Then you brought my name in in the context where you had come to my office; we have given you a lot of time and attention. We have tried to pursue the matter in great detail, and you are operating with a great big smear brush.

Mr. **Atkinson**. Senator——

Senator **Specter**. Let us get down to the facts.

Mr. **Atkinson**. I do not think any of that——

Senator **Specter**. What did you want Mr. Dennis to prosecute the SEC for?

Mr. **Atkinson**. Well, here is a letter that I wrote to Mr. Dennis on November 1983 that outlines all of that. It is a three-page letter. I am not sure it is a useful thing. I will be glad to go over it.

Senator **Specter**. I am not sure any of it is useful, but you——

Mr. **Atkinson**. I am.

Senator **Specter**. Let us go into it.

Mr. **Atkinson**. Okay. The U.S. attorney for Eastern District of Pennsylvania, 601 Market Street, Philadelphia, PA. This is dated November 9, 1983:

> Dear Sir: Further to my conversation yesterday with your Mr. Glazer, I have outlined below the bare bones of my thinking regarding the Sun Ship matter we discussed. By way of introduction, I was the president and chief executive officer of Sun Shipbuilding and Dry Dock Company for some 16 years, from 1961 through 1977, at which time I retired. I have followed shipbuilding industry matters since, and particularly have made it my business to remain current on the market values of various marine assets.

Careful review of the facts underlying the Sun Ship fiasco in 1980 has now led me to the conclusion that the top Sun Company management has probably perpetrated, successfully so far, one of the greatest scams of the last half of this century. It has involved many areas, millions of dollars and thousands of people. In the process, they appear to have played fast and loose with several Federal laws and callously disregarded the interests of employees and others. Much of the underlying information is a matter of public record, although Sun has been successful to some degree in concealing the really damaging material.

Despite the 9-month long investigation by the SEC into their financial hijinks, a lawsuit under the Freedom of Information Act seeking this data and various and sundry other inquiries, several of the smoking-gun items are still under wraps. These are now being sought through other means, and one would expect in an open society that disclosure of these items will ultimately occur.

The purpose of this letter is to bring to the attention of the Department of Justice the three specific matters listed below for whatever action they choose to take.

And I list the three matters below. If you would like me to read on, I will be glad to, or whatever you would like to do.

Senator SPECTER. Yes.

Mr. ATKINSON [reading]:

Obviously, I am of the view that each of these probably involves criminal activity of one kind or another. The scope of the whole and the numbers involved stagger the imagination. These matters are classic examples of the primary importance of white collar cases of this nature affecting the lives of thousands of people in contrast to those that involve a smaller number.

Number one, grossly inept management led to the demise of one of the leading shipbuilding organizations in the United States. False and misleading statements, apparently designed to cover up this lamentable performance and shift the blame to others, was solemnly purported to be true. Probably the most serious instance was the figure-fudging to the tune of several hundred million dollars that took place in the 1980 financials, although several other cases can be documented as well.

Two, the much publicized sale of the shipyard assets in 1982 does not appear to have been a sale at all, but merely an agency agreement couched in sale terms. The risks and rewards of ownership stayed overwhelmingly with Sun, which also seems to have provided the financial wherewithal for the first year or so of operations. This is important because the circumstances under which employees, communities, et cetera, negotiated severance, pensions, community bond and other matters, were not what some purported them to be. Negotiations conducted under this set of circumstances would not seem to have any validity.

Three, following juvenile handling of the enormous figure-fudging and other strange doings by the Washington SEC group—

This was the Corporation Finance Group, I approached the local SEC enforcement people, and they agreed with me that the particular issue—the accounting issue that I was talking about——

Senator SPECTER. Are you reading from the letter now?

Mr. ATKINSON. No.

Senator SPECTER. Well, this is what——

Mr. ATKINSON. I am sorry.

Senator SPECTER. This is what you called to Mr. Dennis' attention.

Mr. ATKINSON. Correct.

Senator SPECTER. So please read from the letter.

Mr. ATKINSON. All right.

A 9-month investigation of Sun's actions resulted. This SEC inquiry was dropped in March of this year without formal action.

Senator SPECTER. Excuse me. What year is that now?

Mr. ATKINSON. The letter is dated November 9, 1983:

At this point, I requested information on an inquiry, feeling that Sun had again dodged a bullet by one means or another. When no information was forthcoming from the SEC FOIA office, I filed suit in the D.C. Federal District Court.

During the course of this lawsuit, substantial information was revealed concerning the nature of the SEC investigation and other matters. Despite several inquiries to various SEC administrative heads requesting explanation of the apparent SEC oddities, a curtain of darkness has descended and no forthcoming information from either the SEC or Sun has been forthcoming.

Considering the circumstances cited above, Sun's recent history of transgressions with various governmental agencies (see enclosed letter to Gus Ballard), the SEC reluctance to explain the oddball problems and other matters, I reached the conclusion that something is rotten in Denmark.

The responsibilities of the Department of Justice to investigate a situation of this kind seem obvious. Along the way, several matters, perhaps unrelated to the Sun Ship matter, have arisen that may or may not be germane to the main thrust of this letter, depending on how all-encompassing these matters became.

My letter to Glen Meade Trust of November 3rd, 1983, a copy of which was sent to the U.S. attorney, identifies one of these matters—

And that is a stock manipulation matter—

As indicated earlier, the purpose of this letter is to bring to the attention of the Department of Justice certain matters that I consider to be in their bailiwick. Should any further information be required at this time, I can be reached in the afternoon at 922-7844. Very truly yours.

Senator SPECTER. So you wrote that letter to U.S. Attorney Dennis with the request that he prosecute the SEC?

Mr. ATKINSON. No. I asked if he would investigate the matter and find out what the circumstances were. I had no knowledge at that time, which I do have at this time, that three-quarters of the stuff we're talking about are false facts. Now, I can demonstrate that they are false facts, and I did demonstrate that, and your own staff has this information.

Senator SPECTER. Well, you had testified earlier that you had asked Mr. Dennis to prosecute the SEC.

Mr. ATKINSON. Well, I paraphrased it and in this—this is what I asked him to do in this particular letter. This is the basic letter.

Senator SPECTER. And you made a complaint according to the documents that I have to the State Board of Accountancy of Pennsylvania against Coopers and Lybrand?

Mr. ATKINSON. Yes.

Senator SPECTER. That arises out of this same manner?

Mr. ATKINSON. Yes. Well, it arises out of the Coopers and Lybrand certification of the same matter.

Senator SPECTER. And the State Board of Accountancy dismissed your complaint?

Mr. ATKINSON. They have now dismissed it twice. They dismissed it and they reopened it, then they dismissed it and now the Governor has it at the moment.

Senator SPECTER. All right, so the State Board of Accountancy dismissed your complaint twice?

Mr. ATKINSON. That is right.

Senator SPECTER. And now the Governor of Pennsylvania has it?

Mr. ATKINSON. Right, and there is also another huge investigation going on with the Auditor General of Pennsylvania.

Senator SPECTER. That is what I was coming to.

Mr. ATKINSON. Okay.

Senator SPECTER. In your letter of June 30 to State Representative Babette Josephs, you refer to an Auditor General's investigation, and the Auditor General of Pennsylvania is investigating this matter?

Mr. **Atkinson**. Yes.

Senator **Specter**. And you have also taken the matter to State Representative Babette Josephs of Philadelphia?

Mr. **Atkinson**. I have kept her abreast of what has been going on for many, many years.

Senator **Specter**. And you have taken the matter to the Dingell committee in the House of Representatives?

Mr. **Atkinson**. Correct.

Senator **Specter**. And you wrote to David Ruder on July 1 of this year that the Dingell committee was misled by the SEC bureaucrats?

Mr. **Atkinson**. Well, I have—I well could have written that. If you have the letter there, I'm sure I may have done that.

Senator **Specter**. Well, I have——

Mr. **Atkinson**. I'd like to take a minute and just talk about your response here and why I'm concerned about the—why I filed a complaint with the Select Committee on Ethics in the Senate.

After a period——

Senator **Specter**. I would appreciate it if you would.

Mr. **Atkinson**. I would like to verbalize that and I think it is fair and everybody should know it, and I didn't think that your executive people understood that very well. Mr. Madine—I'm not sure he has assimilated all the pieces of the puzzle that we're talking about.

Senator **Specter**. I'm not sure I have either yet.

Mr. **Atkinson**. No, I'm not sure you have either.

Senator **Specter**. But I will.

Mr. **Atkinson**. But the very thing I'm talking about here is a response by Senator Specter, signed by Arlen Specter, to me and to Jeanette Reibman, Senator Jeanette Reibman, and to Mr. Ruder, which I answered and identified the fact that you had made statements that were obviously wrong and can be proven obviously wrong without any problems, and what is going on, and that is why I filed this whole situation.

Senator **Specter**. Now, who made a statement from my office which was wrong?

Mr. **Atkinson**. Your letter signed by you, I assume, dated—I can give you that.

Senator **Specter**. Well, I have one letter dated July 12, 1988, to Senator Reibman which says: "Dear Senator Reibman, enclosed please find a reply from the U.S. Securities and Exchange Commission in response to my inquiry on behalf of Messrs. Eugene Schorsch and Paul Atkinson. I am sorry that this problem was not favorably resolved. If I can be of any future assistance to you, please do not hesitate to contact me again."

Mr. **Atkinson**. That was my—that was the letter that I received from you recently, and I say that that is the letter to which I referred that doesn't make a lot of sense as far as I'm—it doesn't tackle the problem that we're talking about.

The problem that we're talking about are the improper statements that you made in three letters. That is the thing that I was concerned about, and that is why I was concerned ethically with this whole situation.

Senator **Specter**. So your concern arises from what my office has done in responding to your request for——

Mr. **Atkinson**. Correct.

Senator **Specter** [continuing]. Further information with the SEC?

Mr. **Atkinson**. I wouldn't say that is all. You have a letter back from me identifying all of that information. You wrote a letter to me and I answered the letter, and my answer says just what it says, whatever it says.

Senator **Specter**. Do you have the three letters that you are referring to?

Mr. **Atkinson**. No, no. I'm just prepared to talk about Mr. Dennis, but I'll be very happy to whenever you like.

Senator **Specter**. Well, since you've brought them up, I'd like to now.

Mr. **Atkinson**. Well, I'll be glad to talk about whatever you like.

Senator **Specter**. Well, do you have the letters?

Mr. **Atkinson**. No.

Senator **Specter**. Mr. Madine, do you have the letters? My staff member who is handling the issue is here. Do you have the letters? Can you find them for me, please?

I don't know of any false information in any letters from my office.

Mr. **Atkinson**. Well, if you have the letters, it is a very simple thing for us to look at. I wrote you a letter shortly after I received these letters from you, and I'm sure that if Mr. Madine is here he can identify the date of those letters.

Senator **Specter**. Well, we will try to do that right now.

Mr. **Atkinson**. Okay.

Senator **Heflin**. Well, while you all are doing that, let me ask you this. As I understand it, your complaint against Sun Shipbuilding Company was that after you left as president, the management that took over mismanaged that company.

Mr. **Atkinson**. I think that is a fact that happened.

Senator **Heflin**. All right. Well, I don't know all the facts.

Mr. **Atkinson**. Right.

Senator **Heflin**. Then you complained to the SEC and you say that they took no action. Now, I'm going to ask you this: Did you ever institute a civil action against the management of Sun that took over relative to your——

Mr. **Atkinson**. No. I think——

Senator **Heflin**. You never took any civil action to pursue it?

Mr. **Atkinson**. No, no. I think that is a task for the Justice Department to prosecute people who break the law, and it seems to me that it is the responsibility of the citizen to say that this law is broken.

Senator **Heflin**. Well, you contend you lost money or property as a result of mismanagement. The law books are full of numerous cases that have been brought by stockholders against management relative to these matters, and rarely do the criminal aspects of the law get into civil enforcement.

Now, you contend, of course, that laws have been broken. There have been a number of investigations made by numerous agencies and departments. They have not agreed with your position.

It is my understanding that your complaint against Mr. Dennis is based on the fact that certain of his assistant U.S. attorneys failed to respond to you in a manner that you liked. They didn't answer letters in regard to this.

Mr. ATKINSON. Maybe——

Senator HEFLIN. I have sometimes a similar situation with some of my staff every once in a while, but that doesn't necessarily mean that I ought to be removed from the U.S. Senate because my staff fails to answer a letter.

But that is basically what I gather the complaint is in regard to this. You may have legitimate complaints against the SEC for not doing what you thought that they should do, but nevertheless it is not for this committee at this particular time.

Mr. ATKINSON. I appreciate that.

Senator HEFLIN. So if you and Senator Specter can have your matters straightened out, I think maybe we understand what your issue is.

Mr. ATKINSON. I'd just like to say one thing, Mr. Chairman, if I could. I agree with everything you just said, and that is why I read—that is why I had this short statement with regard to the problems with the U.S. attorney's office in Philadelphia.

I don't think that—I think this is a small part of a huge problem, but I think somebody has got to get at the base of it.

Senator HEFLIN. Senator Specter, do you want to——

Senator SPECTER. Well, I have reviewed my file, Mr. Chairman. I think that so far as I am concerned, I have inquired into it far enough. The matter——

Mr. ATKINSON. What about the three letters you——

Senator SPECTER. Excuse me just a minute, Mr. Atkinson; it is my turn.

Mr. ATKINSON. Okay.

Senator SPECTER. And I believe Senator Heflin is chairing this committee.

I have reviewed the matter and I have examined the correspondence, and I'm satisfied that my office made an effective effort to assist a constituent, Mr. Atkinson here, on a matter which he had brought to us.

He brought us an inquiry to try to find out what went on in the Sun matter and what happened with the SEC, and according to the file that I have seen, my assistants gave him a tremendous amount of time and corresponded with him at length.

We did not conduct any independent investigation into Sun Shipping. We took the matter in the customary way of referring the issue to the SEC——

Mr. ATKINSON. This is not right, this is not correct. Your own people agree with me, not you.

Senator SPECTER. Mr. Chairman, may I finish here?

Senator HEFLIN. Yes, sir.

Senator SPECTER. We have handled the matters with real diligence in a real effort to help Mr. Atkinson. and I see no false statement anywhere——

Mr. ATKINSON. Well, I'll be glad to point them out to you.

Senator SPECTER. Mr. Chairman, may I finish my sentence?

Senator HEFLIN. Go right ahead, sir.

Mr. Atkinson. You are the one who wanted to look at the letters. Let us look at them, and let us look at them and identify what the problems are. This is a very serious matter, Senator, as you appreciate. What I'm saying——

Senator Heflin. Well, let us let Senator Specter finish. We have given you great leeway in your testimony, and I think it is time for him to be given an opportunity to make his statement without interruption.

Senator Specter. The response that I made on April 20th to Mr. Atkinson thanks him for his letters and recites that in an effort to be as helpful as possible regarding his request, I have written to the SEC, sent on to him a copy of my letter at an earlier date back on May 9, 1988.

My file shows a letter to Mr. Atkinson enclosing for him a copy of the interim reply that I have just received, and saying that I will monitor the matter closely.

Senator Heflin has just departed to vote and we have 6 minutes remaining, and I shall depart to vote as well. We will be back, Mr. Atkinson.

Mr. Atkinson. Fine. Nice to see you, Senator, and I hope all of the things that I've talked about will be worked out in the long run. I'm sure they will.

Senator Specter. The request was made to excuse you, Mr. Atkinson, but I don't think we ought to do that just yet.

Mr. Atkinson. Fine and dandy. You mean you'd like me to stay here today or——

Mr. Short. The committee will stand in recess until the call of the Chair.

Mr. Atkinson. A 10-minute recess?

Mr. Short. Until the call of the Chair. It will be shortly after the vote.

[Recess.]

Senator Heflin. If we could briefly wind this up because we are holding up another hearing, Senator Specter, do you have some more questions?

Senator Specter. Well, Senator Heflin, I have our file and I have reviewed all the letters, and there has been a very extended effort, a very courteous effort on the part of my staff dealing with Mr. Atkinson on many occasions to assist him.

The only issue which he has raised with my staff that I know about is our referral to the chairman of the SEC as opposed to having an investigation by the Judiciary Committee. Is that the——

Mr. Atkinson. No, that is not correct, Senator. I would suggest——

Senator Specter. Well, what is correct?

Mr. Atkinson. Well, I would suggest that you read the mail that we sent to you. What it says is that the statements you made in three letters were grossly erroneous and had nothing to do with the letters we were talking about.

Now, I wrote you an answer to that at the time those three letters were written. To give you a time frame of dates, the date you wrote a letter to Senator Jeanette Reibman and to me and to Mr. Ruder at the same date, whatever that—I think it was maybe May

20, and I wrote to you within 10 days, and that is the letter I'm talking about that identifies all of those problems.

Senator SPECTER. And you are saying that something was erroneous where we wrote to you, Senator Reibman, and Mr. Ruder?

Mr. ATKINSON. That is correct, and my letter points out where they are erroneous, why they are erroneous, what is the problem.

Senator SPECTER. Well, I have those letters before me.

Mr. ATKINSON. Good.

Senator SPECTER. There is nothing erroneous in these letters.

Mr. ATKINSON. I see. May I see one of—any one of them is quite all right.

Senator SPECTER. You may see all three, Mr. Atkinson.

Mr. ATKINSON. Fine. Would you by any chance have my letter a week or 10 days later than these in answer to your letter? My guess is it would be dated April 25 to 30, something like that.

Senator SPECTER. I have a letter dated May 7 from you, 1988.

Mr. ATKINSON. Does that refer to these letters?

Senator SPECTER. Yes, it does.

Mr. ATKINSON. I see. Perhaps you would like to read that.

Senator SPECTER. I'm rereading it right now.

Mr. ATKINSON. Okay.

Senator SPECTER. Well, the shortest way, Mr. Chairman—I hate to take any more time, but the shortest way may be to read Mr. Atkinson's letter into the record.

Mr. ATKINSON. Okay.

Senator SPECTER. Are you finished with those letters, Mr. Atkinson?

Mr. ATKINSON. Yes. If you are going to read it in the record—I just wanted my letter to refresh my mind, but if you are going to read it into the record, I don't have any problem with it.

Senator SPECTER. I'm going to read it into the record. From you to me:

> This will acknowledge receipt of your letter dated April 20, 1988, with the attached letters from you to SEC Chairman Ruder of the same date.
>
> These letters are troubling in the extreme. Requests specifically attributed to me did not occur. Facts have been fabricated that are not true. A fairy tale scenario has been created that doesn't remotely resemble the real picture.
>
> As you know, this matter involves serious allegations concerning false accounting by Sun Company to the tune of hundreds of millions of dollars, affecting the lives of thousands of people. It now looks probable that several of our major law enforcement agencies have been improperly influenced to overlook the Sun irregularities.
>
> Contrary to your specific assertions, I have not requested your assistance in this matter and did not request you to write to anyone on my behalf.

Now, is that one of the false statements which you——

Mr. ATKINSON. That is correct, that is correct. Let me just read—your letter says that I did do that.

Senator SPECTER. Right.

Mr. ATKINSON. Right, and I didn't do that.

Senator SPECTER. My letter says that you requested—yes, my letter says, "Dear Chairman Ruder, I am writing on behalf of and at the request of Mr. Paul Atkinson.

Mr. ATKINSON. Right, and that is what I said was not true.

Senator SPECTER. And that is a false statement?

Mr. ATKINSON. Correct.

Senator SPECTER. Okay.

Mr. ATKINSON. And that is what that——

Senator SPECTER. I must say, Mr. Atkinson, as a very careful lawyer of some standing that I would say that a statement to the Chairman of the SEC in the context of this matter that, "I am writing on behalf of and at the request of Mr. Paul Atkinson," is a true statement.

Now, if you think that is a false statement, you are entitled to your opinion. I think that is a preeminently true statement.

Mr. ATKINSON. Well, I think your opinion is well noted. I understand that. It seems to me if I asked you for a help, that would be a very clear thing that I asked for help.

Senator SPECTER. It seems just extraordinary to me——

Mr. ATKINSON. I had written 50 letters to you, Senator—I don't know how many, large numbers. And this whole subject matter—why don't you finish reading my letter? Why don't you read the falsity stuff into the record?

Senator SPECTER. I just wanted to pause because, to me, it seems just beyond extraordinary that you would take issue with the statement, "I, Arlen Specter, am writing on behalf of and at the request of Mr. Paul Atkinson," but I will continue to read the letter.

Mr. ATKINSON. Good.

Senator SPECTER [reading]:

> This may have been appropriate several years ago when I did seek your assistance, but certainly it is not now. In addition, I did not furnish the information you specifically indicated I had provided in your letter to Mr. Ruder. Further, again contrary to your statement, there is no current SEC investigation of the Sun matter.

And my letter to Mr. Ruder does say:

> I am advised that the SEC currently is conducting an investigation into alleged misconduct by the firm of Coopers and Lybrand in certifying the Sun Company's 1980 annual report.

Now, it seems to me that based on all the information that my office had that it was a very reasonable thing for us to say. But if you are claiming that we made a false statement——

Mr. ATKINSON. I'm just claiming I didn't supply the information that you said I did.

Senator SPECTER. Well, wait a minute. This doesn't say you supplied it.

Mr. ATKINSON. What does it say?

Senator SPECTER. It says, "I am advised that the SEC currently is conducting an investigation," but I'm just trying to get the areas where you say we have done something which is false.

> In view of this, your statement that "Mr. Atkinson has raised a number of questions about the status of the investigation," would thus appear to have been deliberately fabricated for who knows what purpose.

Mr. ATKINSON. In other words, my point——

Senator SPECTER. Well, wait just a second, Mr. Atkinson. It seems to me——

Mr. ATKINSON. Wait a minute now, Senator. Do you want to read my letter and interpret it or are you going to read it?

Senator HEFLIN. Mr. Atkinson, let him ask a question and then you will have plenty of opportunity to answer it.

Mr. ATKINSON. I'm sorry, Mr. Chairman; I appreciate it.

Senator SPECTER. Thank you, Judge Heflin. [Laughter.]

It seems to me that my statement that you have raised a number of questions about the status of the investigation is entirely correct, but you question the accuracy of that.

If you want to comment, I'll listen.

Mr. ATKINSON. Will the judge listen, too?

Senator HEFLIN. Yes, sir.

Mr. ATKINSON. Okay. It seems to me when I write to a U.S. Senator and the U.S.—and request certain assistance, it seems to me I ought to get that request—I should get that assistance. I shouldn't get his deciding what I asked about, and that is the kind of problem we have here.

Now, maybe you would like to go on with the rest of that letter.

Senator SPECTER. No. So far as I'm concerned, I think I've gone on with it long enough.

Mr. ATKINSON. Okay.

Senator SPECTER. I think that there has been an illustration of a Senate staff and a Senator who have responded meticulously and are being questioned in a way which is, with all due respect, Mr. Atkinson, patently unreasonable. And I was reluctant——

Mr. ATKINSON. Well, why——

Senator SPECTER. I was reluctant to get into the matter because I've seen this file, but when you mentioned my name, I felt it appropriate to do so. And I want to thank you, Senator Heflin, Judge Heflin, Mr. Chairman, for according me this opportunity to bring these true facts to light. Thank you very much, Mr. Atkinson.

Senator HEFLIN. Do you have anything else you want to say.

Mr. ATKINSON. Yes. I'd like to read into the record the end of that letter that Senator Specter is avoiding reading, if I can. Maybe he would do that for me.

Senator SPECTER. I'd be glad to do that.

Mr. ATKINSON. I think it bears on the problem we're talking about.

Senator SPECTER. I would be glad to do that:

> Further, again contrary to your statement, there is no current SEC investigation in the Sun matter. In view of this, your statement that, "Mr. Atkinson has raised a number of questions about the status of the investigation," would thus appear to have been deliberately fabricated for who knows what purpose.
>
> This is not the first time in this long-running Sun matter that you have actually disseminated false and misleading information. Your letter of 2-13-84 states in pertinent part, "Members of my staff have spent considerable time investigating this matter and have discussed the merit and findings of the three previous investigations conducted by the Securities and Exchange Commission (SEC)." Since the SEC themselves now admit that there was only one preliminary inquiry, the deception inherent in your statement is appalling.

Mr. Atkinson, I think this record is replete with members of my staff having spent considerable time investigating the matter and discussing the merits and the findings of the three previous investigations. Now, I don't——

Mr. ATKINSON. There were not three previous investigations. That is the very point, that they couldn't investigate the three previous investigations and talk about it if they didn't exist.

Senator SPECTER. Well, they may have been wrong. Maybe there was one, maybe there were two.

Mr. Atkinson. There was one preliminary inquiry that was documented by Sun and led through the whole thing by Sun, and there were never three investigations.

Senator Specter. Well——

Mr. Atkinson. And the SEC agrees there were never three investigations now.

Senator Specter. From what I've seen, it looks to me as if there may have been 33 investigations here, Mr. Atkinson.

Mr. Atkinson. I don't think there have been any adequate—any of any kind adequate.

Senator Specter. I understand your point, but for my staff to say that they have spent considerable time—and if they said three investigations and there was only one investigation, I hardly see the justification for the categorizations here.

Mr. Atkinson. Well, let me maybe——

Senator Specter. Do you want me to read the rest of the letter?

Mr. Atkinson. I thought—is there more to it?

Senator Specter. Oh, there is more to it.

Mr. Atkinson. Yes.

Senator Specter [reading]:

> Even the remote possibility of a U.S. Senator placing the illegal interests of a large campaign contributor above those of thousands of his constituents is bone-chilling. I would hope that you would unequivocally lay to rest any such concerns and take an appropriate public position accordingly.

Well, Mr. Atkinson, I'm just about to do that.

Mr. Atkinson. Okay.

Senator Specter. I think the hearing has been very informative.

Mr. Atkinson. Good.

Senator Specter. I think that you have had a unique opportunity to present your charges against Mr. Dennis on obstruction of justice and false information and his personal knowledge.

And when I review in detail the work that my office did in response to your inquiries—and we have 1,000 letters a week—we have given you a very considerable amount of attention.

Mr. Atkinson. None of that is my problem.

Senator Specter. Mr. Chairman, I think I would rest the case. I may even rest Mr. Dennis' case.

Senator Heflin. All right, sir. Do you have anything else you want to say, Mr.——

Mr. Atkinson. Yes, I have one more thing—no, I guess maybe I've said enough; I think enough for one day.

Senator Heflin. There may be written questions sent to you, and we want to give you an opportunity to present any and all evidence that you have. You are free to file in writing anything that you would like to.

I only have one question that is involved and I'd like to have. After this arose between you and the new management of Sun Shipbuilding Company, did you ever employ a lawyer to advise you?

Mr. Atkinson. No, no.

Senator Heflin. You never did?

Mr. Atkinson. There is no issue between the management of Sun Shipbuilding Company and me. There is a management between Sun Company and me, the financial people of Sun Company.

Senator HEFLIN. Did you ever employ a lawyer to give you advice on all of these matters as to whether something was legal or illegal that the Securities and Exchange Commission, the SEC, or the Department of Justice—or that Coopers and Lybrand or any of these people might have done?

Mr. ATKINSON. No, I never did.

Senator HEFLIN. All right, sir. Well, thank you, sir. You can submit anything in writing that you would like to.

Mr. ATKINSON. Thank you.

Senator HEFLIN. Mr. Dennis, do you want to make any statement in response?

Mr. DENNIS. No, Mr. Chairman, I have no statement in response.

Senator HEFLIN. Well, let me make a statement to you. This, to me, is not only an issue that arises, and it arises because of the complexities of government. As you go into your position, I hope that this brings out a lesson, and that is staff people, people that you depend on, the people that Senator Specter depends on, the people that I depend on, have got to answer letters, and not sometimes fail to answer letters.

I think that every citizen is entitled to, in this country, a response from public officials, whether it may be in the executive branch or legislative branch or other things. And I hope that the staff people who are in the hearing of the sound of this voice—that the words will reverberate through this: The failure to respond to citizens' letters and inquires should at all times be avoided. We ought to always answer letters, and they ought to be answered properly and they ought to be answered with facts and they ought to be answered in a prompt manner.

I think that this is something that government officials as a whole can learn in looking over and in trying to control their staffs. It is an inherent illness that exists because of the numerous letters we get.

I get 2,000 letters a week, but that does not mean that my staff ought not to pay specific attention to them, and I constantly go into these matters and as I go back home, if I have a complaint that a letter is not answered, I endeavor to get to the bottom of it.

And I think that you as you go into your new position should always remember that the citizens are entitled to a response to their inquiries.

Do you have anything else you want to say?

Mr. DENNIS. Mr. Chairman, I just wanted to state for the record that Mr. Atkinson's complaints were responded to. They were responded to by two assistant U.S. attorneys.

The issues he raised were addressed, and I think the problem is that he did not agree with the decision reached by the U.S. attorney, the SEC, the Office of Professional Responsibility, the Fraud Section in the Criminal Division, Mr. Trott, and numerous others, along with Senator Specter and those that have reviewed the matter.

So, you know, I think the response was made and the issue seems to be the decision that was reached.

Senator SPECTER. Mr. Chairman, I would just like to associate myself with your remarks. I think you are exactly right that there are two categories to be addressed. One is staff, which you have addressed eloquently, and another is the citizens who send us letters, and we make every effort.

I just had a series of open-house town meetings in Pennsylvania and the question I asked everywhere was who has written to me, and then I said a lawyer is not supposed to ask a question to which he doesn't know the answer, but I'm about to do that. How many of you have written to me who have not received replies?

We take the names down and get to the bottom of it, and I think that every effort ought to be made to have replies to all letters, whatever their nature may be. And I know that Mr. Dennis has responded in this particular case, as has my staff, but it is a point that cannot be overemphasized.

Senator HEFLIN. We will stand adjourned.

[Whereupon, at 3:05 p.m., the committee was adjourned.]

DEPARTMENT OF JUSTICE NOMINATIONS

(Christensen)

THURSDAY, JULY 28, 1988

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 10:03 a.m., in Room SD-226, Dirksen Senate Office Building, Hon. Edward M. Kennedy (acting chairman) presiding.

Also present: Senators Thurmond, Hatch, Metzenbaum, and Specter.

OPENING STATEMENT OF SENATOR EDWARD M. KENNEDY

Senator KENNEDY. If we could, we will come to order.

I would ask Mr. Christensen if he would be good enough to join us up here at the table. We want to welcome Mr. Christensen to the Judiciary Committee and commend him on his nomination to be Deputy Attorney General of the United States. As Deputy Attorney General, you will be the number two official at the Department of Justice, which has been through a long and difficult time of controversy.

This committee heard testimony this week from former Deputy Attorney General Arnold Burns about the deterioration of morale and continuing erosion of public confidence in the Department of Justice. It will be a significant challenge to restore public confidence in the Department and reassure the many dedicated career employees that the Department is back on track.

Much of the responsibility for restoring that confidence will go to the Deputy Attorney General. As chief operating officer of the Department, the Deputy advises and assists the Attorney General in developing and implementing policies and in providing supervision and direction to all units within the Department.

In addition, the Deputy Attorney General is acting Attorney General whenever the Attorney General is absent or recused from any matter. We have learned in recent months how important the Deputy Attorney General can be. The person who fills that position must have the highest ethical standards, broad legal experience, and proven administrative abilities so that the Department of Justice can live up to its proud name.

We recognize our distinguished ranking minority member and my friend, the Senator from Utah, who, I know, wants to give a special welcome to our nominee.

The Senator from Utah.

STATEMENT OF HON. ORRIN HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

Senator Hatch. Well, thank you very much, Senator Kennedy.

We welcome you, Mr. Christensen. Congressman Owens, we are glad to have you here. I understand that Jake Garn will be here in just a little while; he is down at the White House. So he wants to make a few remarks on your behalf.

Mr. Chairman, I would like to thank you for scheduling this hearing on the nomination of Mr. Harold Christensen to be Deputy Attorney General at the Department of Justice. I do not think the President could have chosen a more qualified individual to nominate for this extremely important position, and I am very proud to have played a role in seeing that you have this nomination opportunity.

Now, Mr. Christensen comes before us with a long and distinguished legal background. He graduated from the University of Utah in 1949 and received his juris doctorate from the University of Michigan Law School in 1951.

Now, I understand the materials put out today have your birth date as 1988. I thought that was a fairly miraculous birth in that regard, but in any event Mr. Christensen was admitted to the Utah State Bar in 1952 and he joined the prominent Salt Lake City law firm of Snow, Christensen and Martineau in 1953. He remained with the firm and eventually served as chairman of the board until his recent appointment as Deputy Attorney General of the United States.

During his career, Hal Christensen has been affiliated with the Salt Lake County Bar Association where he served as president from 1972 to 1973, the Utah Bar Association where he served as president from 1975 to 1976, and the American Bar Association.

He is a member of the very prestigious American College of Trial Lawyers, where he served as Utah State Chairman from 1986 to 1987. Of course, he is a member of the American Bar Foundation, the American Inn of Court where he has played a significant role and where he was the charter president, as a matter of fact, and the American Inns of Court Foundation.

He has also participated in numerous legal committees ranging from the American Bar Association and Utah Bar Association Joint Committee which published the "Appellate Advocacy Handbook for the Utah Supreme Court," and he belonged to the U.S. Judicial Selection Commission.

Now, Mr. Christensen is a recognized legal scholar with several published articles, and he regularly participates in legal seminars and conferences as a lecturer.

I think this distinguished background speaks highly of Hal as an individual who is cited as one "whose life has been devoted to the law." He is a fellow Salt Lake City attorney, and another Salt Lake City attorney has stated that at various social events Harold Christensen "inevitably ends up in a corner in a bull session with another lawyer talking shop. He eats, breathes and sleeps law; he has an all-consuming interest in the law."

Now, I am not saying you are a boring individual, but—— [Laughter.]

At the same time, Hal is a devoted family man. He has many interests, but as he recently stated, "[his] basic goal is to discharge the responsibilities of [his] office for the balance of the Reagan administration."

Mr. Chairman, I am proud to represent a State that can produce such well qualified candidates for public service back here in Washington. Hal has the tools and experience necessary to handle the administrative responsibilities that will be required of him down at the Department of Justice, and he has a commitment to upholding and executing the law. He will be an excellent Deputy Attorney General and, I think, has been an excellent acting Deputy Attorney General. I would hope my colleagues would recommend his confirmation to the full Senate for a vote.

So, Mr. Chairman, at this time let me ask unanimous consent that a letter from Governor Norman Bangerter of the State of Utah in support of Hal's nomination be placed in the record, and I would like to just read it, if I could.

Senator KENNEDY. Fine.

Senator HATCH [reading]:

> DEAR SENATORS, I am writing this letter in behalf of Harold G. Christensen, whom you will review for the office of Deputy Attorney General. President Reagan could not have selected a finer, more qualified person to serve in that position.
>
> Mr. Christensen has enjoyed a long, distinguished legal career in Utah, having been admitted to the State bar in 1952. He was recognized in The Best Lawyers in America in 1983 and again in 1987. His fellow lawyers in Utah honored him as Lawyer of the Year in 1984.
>
> He has tirelessly served the Utah State Bar, as well as the American Bar Association, at numerous levels. In addition to his service to the bar, Mr. Christensen has also rendered tremendous community service. He has been a trustee of the Salt Lake Arts Center and a member of the Salt Lake City Historic Landmark Commission.
>
> In 1985, I appointed him to the chairmanship of the Governor's Utility Regulation Study Committee. The committee made bold, useful recommendations to me in 1987. At no time did Mr. Christensen become discouraged because of criticism. He forged ahead and provided necessary leadership for the committee.
>
> Finally, Mr. Christensen's law firm, Snow, Christensen and Martineau, has developed a reputation for public service in this community. In large measure, that is the result of Mr. Christensen's efforts.
>
> I have no reservations whatsoever in recommending that your committee and the full Senate confirm Mr. Christensen. My only regret is that he is in Washington rather than in Utah. I am extremely proud, however, that he has chosen to serve our country this way.
>
> Sincerely, Norman H. Bangerter, Governor of the State of Utah.

Now, I cannot help but also note that Mr. Christensen has received letters of warm support from all points of the political spectrum in Utah. I mentioned earlier the letter from Governor Bangerter.

In addition, the former Democratic governor, Scott Matheson, has written to pledge his support for Mr. Christensen's nomination. Both the current chairman of the Democratic Party in Utah, Randy Horiuci, and the current chairman of the Republican Party, Craig Moody, joined in wholehearted endorsement of this nomination.

In addition, the immediate past chairmen of both parties, Pat Shea for the Democrats, and Larry Lund for the Republicans, noted their deep approval and respect for this fine professional.

So suffice it to say, Mr. Chairman, that when you get that many Utahans of differing viewpoints agreeing on anything, it is the political equivalent of the arrival of Haley's Comet; it happens once a century. Hal has brought forth this universal approval, and I think that speaks volumes.

In fact, the only Utah official that has any questions about him is me. After all, he enticed my administrative assistant to leave me to go down and become his associate deputy attorney general.

But, in truth, this is evidence of his good judgment because Mr. Benson, my former administrative assistant, I think will be of value to the entire Department, and particularly to you, Hal, as he has been to me. So I want to say that publicly.

I just cannot help but tell you how much I appreciate you accepting this position, the good that you have already done, and I expect you to be the best Deputy Attorney General in the history of the country and I feel confident that you will be.

Mr. **Christensen**. Thank you.

Senator **Kennedy**. We want to welcome to the committee an old friend of mine, a distinguished Congressman from Utah, and a good friend of Robert Kennedy. He worked as a counsel on the Indian Education Committee many years ago and then had distinguished service here in the U.S. Senate. He has been a member of Congress now for a number of years and has been a good personal friend of mine and a very effective Congressman. I want to welcome Congressman Owens.

As Senator Hatch has mentioned, Senator Garn is at the White House, and as we move on through the testimony, Mr. Christensen, when he does appear, I would ask you to withhold and we will permit him to make what statement he might like to make.

But we certainly want to welcome Congressman Owens here to the committee and we look forward to any comments he would like to make about the nominee.

STATEMENT OF HON. WAYNE OWENS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF UTAH

Mr. **Owens**. Thank you very much, Mr. Chairman. It is an honor to be before this committee and you, Senator Kennedy, and my colleague from Utah. Thank you for that kind introduction.

I am pleased to be here to help present a constituent to this committee as he begins this confirmation process. Hal Christensen is known widely throughout Utah and the inter-mountain West and in certain national circles. And so we present him in good conscience into this new forum where he has chosen to work.

He comes to the Justice Department at a crucial time when a shadow hangs over that Department. Mr. Christensen brings with him immense credentials of integrity and competence and strength.

He is, in truth, a lawyer's lawyer. Democratic and Republican lawyers who have worked with him, and against him, have the highest of regard for him. I am pleased that the President has chosen to nominate him and pleased to speak for him this morning as he begins this confirmation process.

Mr. Christensen has shown some bipartisan leanings at times and has, with those flashes of good judgment, been a faithful Republican as well. But, most importantly, this is not a time for politics in the Justice Department. Hal Christensen is a man whose real thrust has always been the law and who has credentials unsurpassed by anyone in the country for administering this huge law firm which is the Justice Department, and for setting policy based upon law, not upon politics.

And so it is a real pleasure, as the token Democrat in Utah's otherwise Republican delegation, to say a bipartisan word for the President's nominee for Deputy Attorney General. He is a good, strong, competent lawyer and a man whose character and integrity are unimpeachable.

Therefore, he brings great strength to the Justice Department and, Mr. Chairman, Senator Hatch, it is a great honor to be before you today and to make that simple, strong statement on behalf of this nominee.

Thank you very much.

Senator HATCH. Thank you, Wayne; we really appreciate it.

Senator KENNEDY. Mr. Christensen, you are off to a very illustrious start here. We have got two distinguished members of Congress who sang your praises to the committee, and we are grateful to them for those personal insights and those professional evaluations.

We know Congressman Owens has got a full program and schedule, so we appreciate his attendance very much.

We have opening statements here from Senator Leahy and Senator DeConcini, which we will insert in the record at this point.

[The statements of Senators Leahy and DeConcini follow:]

U.S. SENATOR PATRICK LEAHY

VERMONT

STATEMENT OF SENATOR PATRICK LEAHY ON THE NOMINATION OF HAROLD CHRISTENSEN TO BE DEPUTY ATTORNEY GENERAL OF THE UNITED STATES

JULY 28, 1988

Mr. Christensen, I want to join my colleagues in congratulating you on your nomination to be Deputy Attorney General of the United States, and in welcoming you before this Committee.

You are serving as Acting Deputy Attorney General at a most critical time. For many months, the Justice Department has been handcuffed by embarrassing allegations of impropriety at the highest level. Several senior officials, including your predecessor, resigned because Mr. Meese's legal troubles disrupted the administration of justice. We hear repeated references to a malaise that cripples the Department.

Vermonters can be awfully direct in their questions. The question I am asked back home hits right at the heart of the Justice Department's troubles. They want to know if anyone is minding the store down here in Washington.

If you and your colleagues, Mr. Dennis and Mr. Keating, and especially Mr. Thornburgh are confirmed, it will be up to you to answer that question. Over the next six months, your greatest challenge will be to put the Department back on its feet and show the American people that someone is minding the store. They need to be assured that the Justice Department is back in business -- vigorously enforcing the law.

Mr. Christensen, from what I hear, you are a highly regarded lawyer and a well-respected member of your community. The materials I have read suggest that you will be able to serve with distinction.

There are a few issues that have been raised in connection with your nomination that need to be examined during these proceedings, most notably allegations of conflict of interest involving the former Chief Judge of the U.S. District Court for the District of Utah, Willis Ritter. I trust that you will answer all questions about this matter and any others candidly and fully.

You have said that you want to turn out the lights at the Justice Department when this Administration comes to a close. I hope that when that time comes you will have already closed the door on debilitating accusations and allegations of impropriety, and that the Department will have started to regain the respect of the American people.

STATEMENT OF DENNIS DECONCINI
CONFIRMATION HEARING FOR HAROLD CHRISTENSEN
JULY 28, 1988

THIS MORNING WE WILL HEAR FROM AN INDIVIDUAL WHO HAS BEEN SELECTED BY THE PRESIDENT TO ATTEMPT TO RESTORE ORDER TO THE JUSTICE DEPARTMENT. EARLIER THIS WEEK THE COMMITTEE HEARD TESTIMONY FROM TWO TOP FORMER OFFICIALS IN THE DEPARTMENT WHO DESCRIBED A CHAOTIC SITUATION THERE. ARNOLD BURNS, FORMER DEPUTY ATTORNEY GENERAL, DESCRIBED THE DEPARTMENT UNDER ED MEESE AS "A WORLD OF ALICE IN WONDERLAND." IT IS IMPERATIVE THAT WE ESTABLISH AT THE TOP LEVELS OF THE JUSTICE DEPARTMENT, INDIVIDUALS OF COMPETENCE AND INTEGRITY AND WITH ENTHUSIASM FOR THE HARD DETAILED WORK OF RESTORING THE DEPARTMENT TO ITS PROPER WORKING ORDER.

THE POSITION OF DEPUTY ATTORNEY GENERAL HAS BEEN LIKENED TO THAT OF A CHIEF OPERATING OFFICER -- A POSITION THAT IS RESPONSIBLE FOR THE DAY TO DAY OPERATIONS OF AN ORGANIZATION -- A POSITION THAT IS UNIQUELY ABLE TO MEASURE MORALE AND PERFORMANCE OF PERSONNEL ACROSS THE BOARD. MR. BURNS TESTIFIED

THAT HE RESIGNED BECAUSE MORALE WAS AT AN ALL TIME LOW, BECAUSE PERFORMANCE HAD COME TO HALT, AND BECAUSE PUBLIC CONFIDENCE IN THE UNITED STATES DEPARTMENT OF JUSTICE HAD COMPLETELY ERODED.

MR. CHRISTENSEN, I HOPE YOU ARE UP TO THE WEIGHTY TASK OF REHABILITATING THE SITUATION AS IT CURRENTLY EXISTS IN THE DEPARTMENT. I HOPE YOU HAVE GIVEN A GREAT DEAL OF THOUGHT TO HOW YOU WILL WORK WITH THE NEW ATTORNEY GENERAL TO RAISE MORALE AND GET PERFORMANCE BACK ON TRACK. ABOVE ALL I HOPE THAT WITH THE CONFIRMATIONS OF THE TWO MEN WHO WERE BEFORE THE COMMITTEE YESTERDAY, AND WITH THE CONFIRMATIONS OF YOURSELF AND MR. THORNBURGH, THAT THE AMERICAN PEOPLE WILL GET THE LEADERSHIP THEY DEMAND AND THEY DESERVE. IT IS ONLY THEN THAT PUBLIC CONFIDENCE IN THE NATION'S LAW ENFORCEMENT SYSTEM WILL BE RESTORED.

I LOOK FORWARD TO HEARING YOUR TESTIMONY AND WORKING WITH YOU OVER THE NEXT FEW MONTHS.

Senator **Kennedy**. Mr. Christensen, I will ask you if you would be kind enough to stand and take the oath.

Do you swear the testimony you will give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. **Christensen**. I do.

Senator **Kennedy**. Thank you. That is a usual procedure which is followed here in the committee.

We would welcome any comments that you would like to make at this time.

TESTIMONY OF HAROLD G. CHRISTENSEN, ACTING DEPUTY ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE

Mr. **Christensen**. I don't really have a statement to make, Senator. I would like to express my appreciation for the generous remarks of Senator Hatch and Congressman Owens, and to express my appreciation to you for setting this hearing.

Senator **Kennedy**. Fine. All right, we will proceed.

In light of the ethical and legal problems which have plagued Mr. Meese, it is especially important that those who are being asked to restore public confidence in the Justice Department are themselves particularly sensitive to ethical matters.

Just this week, Mr. Christensen, this committee heard very powerful testimony from two former senior Department officials, testimony which described in vivid detail Mr. Meese's relationship with his friend, E. Robert Wallach. The former head of the Criminal Division submitted to the committee a 63-paragraph bill of particulars describing that relationship and describing the favors done for Mr. Wallach by Mr. Meese and for Mr. Meese by Mr. Wallach.

Let us leave aside the question of whether those actions violated the criminal law, but the question I would like to ask you is: When you were approached to be the Deputy Attorney General, did you take any steps to find out why your predecessor and the Assistant Attorney General for the Criminal Division had resigned?

Mr. **Christensen**. I really did not, Senator.

Senator **Kennedy**. Well, why not?

Mr. **Christensen**. I felt that I might be in a position where I would be required to make certain——

Senator **Kennedy**. You could just bring the mike up just a little closer, if you would, please.

Mr. **Christensen**. Sure.

I think I felt I might be in a position where I would need to make—may need to make some judgments with respect to that in this position and I felt it inappropriate to conduct an investigation of my own.

Senator **Kennedy**. Well, didn't you think it was important to know what the situation was that you were being asked to step into?

Mr. **Christensen**. Not in that sense, I don't think I did. I felt that I was going to come back here, if given the opportunity, and to administer—in effect, be the hands-on administrator of the Justice Department. I felt it inappropriate to either attempt to inform myself of those circumstances or to form a judgment with respect to it. I was, of course, aware generally of what was in the newspapers.

Senator KENNEDY. Well, did you think it was important to assure yourself that you would have the authority to take whatever actions you deemed necessary to run the Department of Justice, including having perhaps the Attorney General step aside temporarily, if necessary?

Mr. CHRISTENSEN. In the sense that I felt that I would be given the authority to do what I needed to do and that I would not be interfered with in those areas where I may have responsibility, but only in that sense, I think.

Senator KENNEDY. Well, did you think that you did have that authority? We heard, you know, the testimony in the course of this week. The Deputy Attorney General gave administrative leave in a number of different times when there were situations which called for it, but obviously he couldn't do it with regard to the Attorney General.

And he was approached on a number of different occasions by individuals who were being given administrative leave, or by their attorneys, wondering why they were being given administrative leave when the allegations that were made against the Attorney General were a lot more serious than those against them. This is one of the real frustrations that he had about this whole situation.

He really didn't feel that he had the authority or had the power to be able to deal with this situation, and I am just wondering whether you felt that you were going to be able to have the authority and the power to be able to deal with the matters which had been generally printed in the newspapers and which Mr. Burns and Mr. Weld—were attributed as to the reasons why they resigned.

Mr. CHRISTENSEN. Well, to answer that specifically, I do not think that the Deputy Attorney General would have the authority to ask the Attorney General to step down under what might be administrative leave conditions for some subordinate employee. No, I do not think so.

Senator KENNEDY. So do I understand you that, even though you read these matters in the newspaper, and although we had two distinguished lawyers that felt that there were sufficient reasons to resign because of various ethical and, in one case, criminal violations, that you did not believe that there was any burden upon yourself—responsibility on yourself—to either consult with them or to find out whether you were prepared to deal with those issues as the Deputy Attorney General, matters which were unacceptable to the previous Deputy Attorney General? And you didn't pursue what authority you might have to be able to deal with those particular issues if you were to be confirmed as Deputy Attorney General?

Mr. CHRISTENSEN. I did not confer with either of those gentlemen. I was not part of the administration, so to speak. I had no prior employment with the Justice Department. I felt it would be inappropriate for me to talk to them about it.

Senator KENNEDY. If you are confirmed, what would you do if you thought the Attorney General should step aside? What actions would you take?

Mr. Christensen. In a hypothetical sense, I may be called upon to make some decisions with respect to pending matters and I really wouldn't want to make a comment about the current Attorney General.

Senator Kennedy. No, I'm not asking—I'm talking about a situation where you felt that you couldn't serve any more because of various conditions. What actions would you take?

Mr. Christensen. Well, again, to answer that specifically, if I felt that conditions were such that I couldn't perform my responsibilities, I assume I would probably resign. I don't expect any situation of that kind to arise.

Senator Kennedy. But you didn't feel that the conditions that were in existence at the time might be of that particular nature so that it would hinder your own willingness to take the job?

Mr. Christensen. No.

Senator Kennedy. You didn't feel it was important enough to find out whether those conditions existed so that you might not have taken the job?

Mr. Christensen. No, I did not.

Senator Kennedy. I gather from a partial answer to an earlier question that you haven't formed any opinion about either the ethical or legal questions affecting the current Attorney General?

Mr. Christensen. No, I have not.

Senator Kennedy. And if you were confirmed and the Office of Professional Responsibility were to make a report, which they are doing at the current time on the Attorney General—you would support the Office of Professional Responsibility in seeing that they meet their responsibilities in filing and making their report?

Mr. Christensen. I would expect that office to discharge its responsibilities.

Senator Kennedy. Let me, if I could, go into another area. I would like to turn to specific matters that arose during the course of your law practice in Utah. You were advised yesterday by my staff about the subject of these inquiries so that you would have an opportunity to refresh your recollection about them.

In inquiring about these matters, we want everyone to understand that we are simply trying to develop a full record for the nomination hearing. Mr. Christensen had a lengthy and distinguished professional career, but it is in the nature of these hearings to dwell on the few questions that do arise.

I would turn first to the relationship between your law firm and Judge Ritter, who served as the chief judge of the Federal court in Utah until his death in 1978. As I understand it, your law firm represented Judge Ritter in an action brought in February 1974 by a Mr. Julius Petrofsky against Judge Ritter and two other court employees.

That representation persisted from March 1974 through at least the balance of 1974. At the same time your law firm was representing Judge Ritter, they had at least one dozen cases pending before him.

Were you aware at the time that your firm was representing Judge Ritter in the Petrofsky case?

Mr. Christensen. Yes, I am.

Senator KENNEDY. Well, do you have any comments to make about the fact that you were representing Judge Ritter—your law firm was representing Judge Ritter against Mr. Petrofsky at the same time that your firm had a dozen cases pending before him?

Mr. CHRISTENSEN. I can explain that, I think.

Senator KENNEDY. Sure.

Mr. CHRISTENSEN. Mr. Petrofsky——

Senator KENNEDY. You see what the issue is? I'm not trying to——

Mr. CHRISTENSEN. Yes, I think I do.

Senator KENNEDY. And I just want to give you an opportunity to sort of lay that out. On the one hand you are representing the judge; on the other hand your law firm has got a number of cases that are before the judge, and I just want to—we are dealing again with the sensitivity on these various, different ethical issues and questions—give you an opportunity just to make what comment on this that you would like.

Mr. CHRISTENSEN. Yes. Mr. Petrofsky was an unsuccessful litigant in a case that was tried before Judge Ritter, and he thereafter attempted to get information on his own behalf, representing himself, so to speak, and had a lot of problems and difficulties with the clerk's office.

And eventually he filed a suit against Judge Ritter and against the clerk of the court, of the U.S. District Court, seeking to get some papers and to get relief from an order that the judge had entered setting forth the procedures by which papers could be obtained from the clerk's office.

My partner, John Snow, who is now deceased, told me that Judge Ritter had asked him if he would file a response on behalf of the court and the clerk, and John told me that he thought he would do that, and he did do that. And that case was dismissed, I think, principally on grounds of immunity, judicial immunity.

And I didn't feel that the representation by John of the judge under those circumstances where it was not really a substantial personal matter to the judge, but was more a procedural matter with respect to the clerk—that that in any way disqualified me from continuing in cases in Salt Lake City where I was involved before Judge Ritter.

I had never represented the judge on a case that he was involved in personally and significantly, and neither has John, to my knowledge, or any member of our firm.

Senator KENNEDY. Doesn't the U.S. attorney generally represent the judges?

Mr. CHRISTENSEN. Yes, and the U.S. attorney eventually came into this case.

Senator KENNEDY. But he didn't come in at the beginning?

Mr. CHRISTENSEN. No, no. Judge Ritter was a very controversial man. He had a lot of disagreements with the U.S. attorney and with other government attorneys.

Senator KENNEDY. Was there compensation for that case?

Mr. CHRISTENSEN. My understanding is no.

Senator KENNEDY. There was no compensation charged by the law firm for that case?

Mr. CHRISTENSEN. No, there was no—my understanding is there was no bill submitted and no compensation paid.

Senator KENNEDY. Why not?

Mr. CHRISTENSEN. Well, I think John thought it was more or less a responsibility to the court and to the clerk, more like, you might say, a lawyer's obligation.

Senator KENNEDY. Were you aware at the time that they were representing the judge that there were these other cases before the firm—I mean, that you had the cases before Judge Ritter?

Mr. CHRISTENSEN. Well, I personally appeared before Judge Ritter frequently, so I was not only was aware of it, I was involved.

Senator KENNEDY. Do you know how many cases your firm had before Ritter back in 1974?

Mr. CHRISTENSEN. No.

Senator KENNEDY. As I understand it, it has been suggested that there were at least a dozen. Does that sound about right? I'm not trying to———

Mr. CHRISTENSEN. I think that might be about right.

Senator KENNEDY. At least one case that you had before Judge Ritter was the Countryside Farms case.

Mr. CHRISTENSEN. Yes.

Senator KENNEDY. Do you remember that case now?

Mr. CHRISTENSEN. Yes, I do.

Senator KENNEDY. You represented the defendant, Olson Farms, in the Countryside Farms case before Judge Ritter, and that was a civil antitrust case brought by the Federal Government in 1975.

At that time, you were president of the Utah State Bar and the bar had before it a total of six resolutions, four of which were damaging to or critical of Judge Ritter. You sat on the executive committee of the bar that considered and recommended against the adoption of three of those four resolutions. The committee took no position on the fourth, as I understand it. In January 1976, the bar commission of which you were a member accepted these recommendations and the State bar itself then defeated the resolutions.

A petition was filed alleging that Judge Ritter had demonstrated actual bias in your favor in a hearing conducted soon after the bar defeated the critical resolution, and the Tenth Circuit Court of Appeals granted that request.

In fairness to you, I would make it clear that the appellate court specifically rejected the charge that you did act as either an attorney or an advocate of Judge Ritter. The court said that "the government has failed to prove impropriety on the part of Mr. Christensen," and it also rejected the charge that the evidence showed he was actually biased in your favor. But the court did conclude that maintaining the appearance of impartiality required that Judge Ritter be disqualified from the case.

My question is, in hindsight do you accept and appreciate the court's reasoning for making that determination.

Mr. CHRISTENSEN. I think, on reflection, that the court was justified in that. I think the government received a fair trial.

Senator KENNEDY. As I understand it, the recusal statute requires Federal judges to remove themselves from any case in which the judge's lawyers appear for any party. During the time that Judge Ritter was represented by your firm, did you ever advise

Judge Ritter or any opposing party in a case before Judge Ritter that your firm represented Judge Ritter in some litigation so the judge would recuse them or so that opposing party could consider filing a recusal motion?

Mr. **Christensen**. I don't remember that specifically, Senator. Utah—the Federal bar of Utah is very small. The lawyers that appear in the Federal court know quite well the kinds of cases that each handles. We only had two Federal judges, and I assume that the Petrofsky matter was common knowledge of all lawyers in Salt Lake City.

Senator **Kennedy**. Your firm's representation of Judge Ritter became a subject of public attention in May of 1976 when a deputy attorney general of Utah, Robert Hansen, testified before a subcommittee of the Senate Judiciary Committee on Judge Ritter's tenure as chief judge of the Federal court.

Mr. Hansen said the following:

> If a judge needed the services of a law firm for personal legal help, it would be wise for him to select a firm with little or no Federal practice. If he did retain a law firm which often engages in Federal practice, it would then be wise for the judge to bow out of any cases involving that law firm. Judge Ritter has failed to follow such a standard. In fact, in the past few years he or his family has employed the services of no less than three firms.

One of the firms he listed was your firm.

Mr. Hansen continued:

> Each of these three firms have a very substantial Federal practice. The court records show that Judge Ritter continued to hear cases presented by these law firms at the same time they were representing him or his family.

Didn't you get troubled by the appearance that this created that the judge might not be impartial because he was a client of your firm?

Mr. **Christensen**. Senator, I thought there was a very important difference between the case involving the clerk's office and the other two cases that Mr. Hansen mentioned. Judge Ritter was involved in a very substantial dispute over some gypsum rights in Utah where he had a very significant financial interest. That is one of the cases that Mr. Hansen referred to.

The other—and I'm not sure exactly which the other one is. It could have been a personal injury case that Judge Ritter or it could have been the dispute over some islands in the Snake River of Idaho.

Those cases involved significant economic interests of the judge, and I think are considerably different. But I understand your point.

Senator **Kennedy**. You are familiar, obviously, with the details and the factual situations in those cases. It is not only the facts, but the appearance as well, that is important.

We are joined by other members. I had just two or three other brief areas that I wanted to cover and then I would be glad to yield to our colleagues.

Senator **Hatch**. Why do you not go ahead?

Senator **Kennedy**. One is you have retained your interest in the firm's profit-sharing interest, apparently, so it can earn interest for 1988. The Legal Times reported that the trust holds stocks worth $6 million in a broad variety of companies.

The object of these questions is simply to make sure that we get your own sense about how you will conduct yourself when matters involving stocks in the trust come up in the Department and whether you will attempt to secure a waiver of conflict of interest rules.

This issue has come up in more recent times involving the Baby Bell situation and Mr. Meese. That is either relevant or not, but I am interested in the general conduct. I think there has been a heightened public interest, obviously, at least with regard to the situation there.

Will you assure this committee that you will either recuse yourself from matters involving the stocks held by the trust or secure appropriate waivers on the conflict of interest rules?

Mr. CHRISTENSEN. Yes, I will. In fact, I have really gone farther. After discussing it over the past several weeks with people within the Department, I concluded that I should just get out of the trust, and that is what I have done.

Senator KENNEDY. Oh, you have? Well, the record should so show that. I was not aware of it.

As you know, you will have important responsibilities for the Civil Rights Division, among other agencies, and I think there is some interest in what sensitivity you have on civil rights.

You have been a member of the Alta Club in Salt Lake City, which has explicitly excluded women from membership until last year, and I am interested in just exploring your own sense about the importance of the Civil Rights Division.

I am not asking you to make a comment or agree or differ with me, but I think there is at least a plausible case that can be made that in recent times the Civil Rights Division has not been the real defender of civil rights. You will have differences on this committee on that issue. But the Division was slow-moving in terms of the support for the extension of the Voting Rights Act, on the whole question of using taxes for segregated schools, and on a range of different issues that have been the concern of some of us. Others on this committee have not been as concerned about it, but I have.

There has been opposition to the Civil Rights Restoration Act, and attempts at reopening scores of settled school desegregation and employment discrimination cases, for example, in the South. And I just would hope that in the remaining months of the administration the Justice Department under new management can begin to restore the good name of the Civil Rights Division.

Will you give this committee assurance that you will keep a close eye on the Civil Rights Division and do everything in your power to ensure that the Division supports civil rights rather than throwing obstacles in the path of effective enforcement?

Mr. CHRISTENSEN. I think I can assure you of that. I would certainly—I'm sensitive to civil rights issues and I would not knowingly create any obstacles.

Senator KENNEDY. Well, as you can well understand, there is concern about your own sensitivity, since there is not a great deal in your background that would demonstrate what your view is about this one way or the other.

I think this is something the country has made a strong determination not to retreat on, and I think that whatever you might say in terms of supporting both the existing laws and believing that those should be enforced and the Civil Rights Division ought to be an instrument to guarantee those rights, to the extent the laws provide it, I think would be of some reassurance to people.

Mr. CHRISTENSEN. Well, let me say that I do believe in the civil rights laws and I do believe that they should be enforced.

Senator KENNEDY. We are joined by a number of other members here and I have taken more than my share of the time, but I would be glad to recognize some others.

The Senator from South Carolina.

Senator THURMOND. Mr. Christensen, we are glad to have you with us.

Mr. CHRISTENSEN. Thank you.

Senator THURMOND. Mr. Chairman, I have been at the White House and just got back, and to save time I ask unanimous consent that my statement be placed in the record.

Senator KENNEDY. It will be placed in the record.

[The statement of Senator Thurmond follows:]

STATEMENT BY SENATOR STROM THURMOND (R-SC) REGARDING THE NOMINATION OF HAROLD G. CHRISTENSEN, OF UTAH, TO BE DEPUTY ATTORNEY GENERAL OF THE UNITED STATES, BEFORE THE SENATE COMMITTEE ON THE JUDICIARY, THURSDAY, JULY 28, 1988, AT 10:00 A.M., ROOM 226 DIRKSEN.

MR. CHRISTENSEN I WANT TO WELCOME YOU HERE TODAY, AND TO EXTEND MY CONGRATULATIONS ON YOUR NOMINATION BY THE PRESIDENT FOR THIS VERY IMPORTANT POSITION.

THE DEPUTY ATTORNEY GENERAL IS THE NUMBER TWO MAN AT THE DEPARTMENT OF JUSTICE AND AS SUCH IS REQUIRED TO ASSIST THE ATTORNEY GENERAL BY INSURING THE FAIR AND EQUITABLE ADMINISTRATION OF JUSTICE IN THIS COUNTRY. FURTHERMORE, IT IS THE DEPUTY ATTORNEY GENERAL'S RESPONSIBILITY FOR THE IMPORTANT DAY-TO-DAY OPERATIONS OF THE DEPARTMENT.

MR. CHRISTENSEN'S EXTENSIVE BACKGROUND HAS PREPARED HIM WELL FOR THIS POSITION AND THE RESPONSIBILITIES HE WILL UNDERTAKE. HE RECEIVED HIS BACHELOR OF ARTS DEGREE FROM THE UNIVERSITY OF UTAH IN 1949. IN 1951, HE GRADUATED FROM THE UNIVERSITY OF MICHIGAN LAW SCHOOL. MR. CHRISTENSEN HAS BEEN A PRACTICING ATTORNEY FOR OVER 35 YEARS, AND DURING THAT PERIOD HAS SERVED WITH DISTINCTION AS PRESIDENT OR CHAIRMAN OF MANY BAR ASSOCIATIONS AND LEGAL COMMITTEES.

MR. CHRISTENSEN, POSSESSES THE KNOWLEDGE AND EXPERIENCE TO SERVE IN AN EXEMPLARY MANNER AS DEPUTY ATTORNEY GENERAL. HE HAS THE FINE ATTRIBUTES OF MEDIATOR AND PROBLEM SOLVER, ALONG

WITH THE ABILITY TO EXERCISE GOOD JUDGEMENT REQUIRED OF A PERSON SERVING IN A POSITION OF SUCH AUTHORITY.

I BELIEVE MR. CHRISTENSEN IS COMMITTED TO EQUAL JUSTICE FOR ALL AMERICANS AND I AM SURE HE WILL MEET THE CHALLENGES THAT LIE AHEAD WITH COMPETENCE, ENTHUSIASM AND PROFESSIONALISM. AGAIN, MR. CHRISTENSEN, WELCOME TO THE COMMITTEE AND I LOOK FORWARD TO HEARING YOUR TESTIMONY.

Senator THURMOND. Mr. Christensen, you have been a practicing attorney for over 35 years. Now, the President has nominated you to be Deputy Attorney General. Would you tell the committee what you feel will be the most satisfying aspect of serving in this capacity?

Mr. CHRISTENSEN. I think doing important public service. I haven't really had that opportunity in my life and I think that would be the most satisfying experience that I could have from this opportunity. I enjoy the work that I have done since I've been here; I feel it is important. I'd like to serve out the balance of this administration.

Senator THURMOND. Mr. Christensen, what do you consider to be the primary goals and priorities facing you at the Department of Justice if you are confirmed as Deputy Attorney General, and what actions will you take in accomplishing these tasks?

Mr. CHRISTENSEN. I think—well, let me say that I personally have no agenda. I would like to be a part of the implementation of the policies that are currently in place. My responsibilities are, to a large measure, administrative.

I think that one of the most important programs that the Justice Department is involved with is the war on crime and drugs. I don't have direct responsibility for that, but I do have supervisory responsibility. My responsibilities deal more with the civil side of the Justice Department.

Senator THURMOND. Mr. Christensen, traditionally the Deputy Attorney General has been responsible for oversight of the day-to-day operations of the Department of Justice. Would you tell the committee what your duties will be under the Attorney General, and have you, in fact, discussed this with Attorney General Meese or Attorney General-designate Thornburgh?

Mr. CHRISTENSEN. I have not had such a discussion with Attorney General-designate Thornburgh. I have not had a specific discussion of that nature with Attorney General Meese, although in performing my duties it is implicit that we do discuss what my responsibilities are.

I have oversight responsibility for the Department of Justice generally and I have specific responsibilities with respect to certain divisions, and I just—I suppose I just follow the organizational chart as it presently exists.

Senator THURMOND. Mr. Chairman, I understand that Senator Garn has to be somewhere at 11 o'clock, so I am willing to yield and let him go ahead now and make a statement.

Senator KENNEDY. Senator Garn, we are glad to have you.

STATEMENT OF THE HON. JAKE GARN, A U.S. SENATOR FROM THE STATE OF UTAH

Senator GARN. I thank the Chairman and ranking minority member, and I apologize for being late. Senator Thurmond knows where I was. We were down at a meeting at the White House which started late and ended late.

Senator KENNEDY. Do you want to tell us what went on down there and let the rest of us in on it?

Senator GARN. I would be happy to tell you, Ted, that we came to no conclusions, which is not unusual. It was a wide-ranging debate on many subjects.

But I do appreciate the opportunity of being here and breaking in because this is an important nomination to an important position, particularly at this time, in the Justice Department.

I have known Harold for many, many years, and I am sure that everybody has told attorneys' stories at one time or another and I would suggest that it is not possible to tell attorney jokes about Harold because he is, without doubt, one of the most highly respected attorneys in our State; that is, across the political spectrum and without exception.

If you talk to people in the legal profession in our State, they are unanimously in favor of this nomination because of not only his legal ability, but even more importantly, the integrity, the respect in which he is held in our State, and particularly within the Utah State Bar. It is absolutely across the board.

I had a prepared statement that I would like to place in the record. I came directly from the White House; I will see that that gets down here. I would not take the time of the committee to go through that in any event, but I did want to stress how highly personally I am in favor of this nomination.

It is traditional for Senators from a State to come up and endorse someone from their particular State, but it goes far, far beyond that, in my opinion, that this is one of the best appointments that this President has made not only to the Justice Department, but in any of the departments that he has made, as far as a man of integrity and ability.

I just could not be in more support of this particular nomination.

I thank the committee.

Senator KENNEDY. Thank you very much for taking the time to come here. We are very grateful to you and we will take your words with great appreciation.

The Senator from South Carolina.

Senator THURMOND. Mr. Christensen, do you feel that the resources of the divisions for which you are responsible are sufficient to handle the broad and varied areas of litigation in which they are involved?

Mr. CHRISTENSEN. Senator, I've been working with the budget and with those kinds of problems since I came here, and the Justice Department needs more money, and I suppose every branch of government needs more money, but we need more money.

The war on drugs and crime results in more arrests and it ripples right through the structure, and we have some very serious problems with the Bureau of Prisons, for example, but it goes beyond that—U.S. attorneys, trial judges.

I think like perhaps every department of government, we could say, yes, we need more money.

Senator THURMOND. Mr. Christensen, since you have been at the Justice Department, what is your opinion as to the operations of that Department? Is it operating as usual? Is it doing a good job? Is the morale low or is it high, or what is the situation?

Mr. CHRISTENSEN. I have no experience really with the Justice Department other than to be a lawyer on the other side in a trial until I came to Washington, but when I came to Washington I arranged meetings with each of the division heads that report directly to me.

I was impressed with the quality of those persons. I was impressed that there was high morale; that they were effective and they were doing their job. I didn't have the sense that I had read in the paper that there was a malaise about the Justice Department. That was not my perception.

Senator THURMOND. Have you found people there of competence and dedication and professionalism?

Mr. CHRISTENSEN. Yes, highly competent people.

Senator THURMOND. Have you found any reluctance on their part to fulfill their full duties?

Mr. CHRISTENSEN. No, I have not.

Senator THURMOND. Are you satisfied with the running of the Justice Department?

Mr. CHRISTENSEN. Well, I think I am. I think it has functioned effectively.

Senator THURMOND. Are you satisfied with the morale there among the people who are working there?

Mr. CHRISTENSEN. I think morale is high.

Senator THURMOND. Has Mr. Meese said or done anything that would quell your enthusiasm or cause you to regret that you came there?

Mr. CHRISTENSEN. He has not.

Senator THURMOND. Has he cooperated with you?

Mr. CHRISTENSEN. Yes, he has.

Senator THURMOND. Mr. Christensen, I won't take long. I just want to say that I did not know you until you came here, but I had heard the distinguished Senator from Utah, Senator Hatch, speak so highly of you. I believe he recommended your appointment, and from all I have been able to ascertain about your reputation as a lawyer and as a man, I want to say that it is excellent.

I am very pleased you have been appointed here. I think you are competent to fulfill these duties and I hope you will be confirmed shortly.

Mr. CHRISTENSEN. Thank you.

Senator KENNEDY. The Senator from Ohio.

Just for the information of the committee, we have final passage on the Endangered Species Act, so if someone wants to go over and get in an early vote, we can keep the committee moving without loss of time.

The Senator from Ohio.

Senator METZENBAUM. Mr. Chairman, I ask unanimous consent that my opening statement be included in the record.

Senator KENNEDY. It will be included in the record.

[The statement of Senator Metzenbaum follows:]

OPENING STATEMENT OF SENATOR METZENBAUM

HEARING ON THE NOMINATION OF
HAROLD CHRISTENSEN TO BE DEPUTY
ATTORNEY GENERAL
SENATE COMMITTEE ON THE
JUDICIARY
JULY 28, 1988

THE POSITION OF DEPUTY ATTORNEY GENERAL IS CRITICALLY IMPORTANT FOR TWO REASONS. FIRST, THE PERSON WHO HOLDS THAT OFFICE HAS OVERALL RESPONSIBILITY FOR THE DAY TO DAY MANAGEMENT OF THE DEPARTMENT. SECOND, AND MORE

IMPORTANTLY, THE DEPUTY ATTORNEY GENERAL BECOMES ACTING ATTORNEY GENERAL IN THE ABSENCE OF THE ATTORNEY GENERAL.

WE HAVE SEEN IN RECENT HISTORY HOW CRUCIAL THAT RESPONSIBILITY CAN BE. WHEN ELLIOTT RICHARDSON RESIGNED AFTER PRESIDENT NIXON DISCHARGED ARCHIBALD COX, WILLIAM RUCKELSHAUS ALSO ANNOUNCED HIS RESIGNATION, SENDING A MESSAGE TO THE COUNTRY ABOUT THEIR COMMITMENT TO THE RULE OF LAW. WHEN ATTORNEY GENERAL MEESE RECUSED HIMSELF FROM MANY MATTERS, ARNOLD BURNS ASSUMED RESPONSIBILITY. AND WHEN MR.

BURNS COULD NO LONGER IN GOOD CONSCIENCE REMAIN WITHIN THE DEPARTMENT, HE, TOO, RESIGNED.

EARLIER THIS WEEK, WE HEARD TESTIMONY FROM MR. BURNS AND WILLIAM WELD, WHO SERVED AS HEAD OF THE CRIMINAL DIVISION. THEIR TESTIMONY RECONFIRMED WHAT HAS BEEN OBVIOUS TO THE WHOLE NATION. THE REPUTATION OF THE JUSTICE DEPARTMENT HAS SUNK TO THE LOWEST LEVEL SINCE WATERGATE. THE ATTORNEY GENERAL HAS BEEN MIRED IN SCANDAL SINCE HIS FIRST NOMINATION IN 1984. HE CONTINUES TO CLAIM HE HAS

BEEN ENTIRELY VINDICATED, EVEN THOUGH HE WAS FOUND TO HAVE VIOLATED THE CRIMINAL LAW ON FOUR OCCASIONS BY THE INDEPENDENT COUNSEL AND EVEN THOUGH HIS OWN TOP ASSISTANTS RESIGNED TO PROTEST HIS MISCONDUCT.

MR. BURNS AND MR. WELD HAD THE COURAGE TO SPEAK UP AND TO RESIGN. THEIR ACTIONS WERE A CREDIT TO THE LEGAL PROFESSION AND TO THE INSTITUTION OF THE JUSTICE DEPARTMENT. ALL OF US HOPE THE DAY WILL NOT COME WHEN YOU ARE FACED WITH A SIMILAR DILEMMA. BUT, IF YOU ARE, WHAT WILL YOU DO? WILL YOU PUT THE RULE OF LAW, AND THE INTEGRITY

OF THE DEPARTMENT, OVER POLITICAL LOYALTY? WILL YOU ENFORCE THE LAW WITH GOOD JUDGMENT AND A HIGH DEGREE OF COMPETENCE, WHETHER THE DEFENDANT IS A SMALL TIME CROOK OR THE PRESIDENT OF THE UNITED STATES?

IF YOU ARE CALLED UPON TO ASSUME THE RESPONSIBILITY OF ATTORNEY GENERAL, WILL YOUR PRIMARY LOYALTY BE TO THE RULE OF LAW AND TO THE NATION, OR TO A PARTICULAR PRESIDENT OR PARTICULAR POLITICAL PARTY?

I LOOK FORWARD TO HEARING YOUR TESTIMONY. I WANT TO KNOW, I BELIEVE ALL OF US WANT TO

KNOW, IF YOU CAN BEGIN RESTORING THE CONFIDENCE OF THE AMERICAN PEOPLE IN THE DEPARTMENT OF JUSTICE.

Senator **Metzenbaum**. Mr. Christensen, it is nice to see you again, sir.

Mr. **Christensen**. Thank you.

Senator **Metzenbaum**. I want to ask you about your views regarding the referral by the independent counsel of certain ethical matters involving Mr. Meese to the Office of Professional Responsibility. Depending on the circumstances, it could be your responsibility to decide whether these investigations will be completed.

Mr. Meese has said a number of times that he has been exonerated and vindicated by the report and that he has done nothing improper. Yet, the independent counsel concluded he had violated criminal laws on four occasions, and made a referral for further investigation of ethical violations.

Earlier this week, we heard testimony from former Justice Department officials that ethical violations were certainly committed, and Mr. Weld felt criminal prosecution was warranted.

Mr. Meese is leaving. It seems to me that future Attorneys General—in fact, all future senior government officials—are left with this cloud of uncertainty as to what the proper rules of conduct are.

Do you believe that the Department should complete the investigations referred to it by the independent counsel, and in your role at the Department will you support such a position as you now indicate by your response?

Mr. **Christensen**. Senator, it is—I am informed that those matters have been referred to the Office of Professional Responsibility and I expect that office to discharge its responsibilities, and I would certainly not do anything to interfere with their discharge of their responsibilities.

Senator **Metzenbaum**. Will you support—do you believe the Department should complete the investigations referred to it by the independent counsel?

Mr. **Christensen**. Well, when you say "support," I don't know what their report is going to be.

Senator **Metzenbaum**. No. I'm asking you about completing the investigation.

Mr. **Christensen**. I certainly believe that they should discharge their responsibilities, and I will do nothing to interfere with that. Now, I don't think I can comment as to whether I may disagree or agree with whatever conclusions——

Senator **Metzenbaum**. I understand that, but you would support the matter of their concluding their investigation and issuing a report if they deem it appropriate to do so? I guess there would be no choice but to issue a report.

Mr. **Christensen**. Well, I would certainly support their doing what they are obligated to do.

Senator **Metzenbaum**. Mr. Christensen, the Department has not been courageous—in fact, it has been downright shameful—when it comes to the issue of firearms. The Attorney General did eventually agree to support effective legislation to ban undetectable firearms which Senator Thurmond and I cosponsored, and the Attorney General deserves credit for that.

But the fact is that he first supported a bill backed by the National Rifle Association that was totally ineffective. Only after the law enforcement groups of this country expressed their strong displeasure did he change his mind.

Then when some of us wanted to add the most serious firearms violations to the racketeering law, RICO, the Justice Department opposed the idea. It supported adding credit card fraud to RICO, but not adding—and this is almost unbelievable—not adding the crime of knowingly selling arms to convicted felons; add credit card fraud, but not add knowingly selling arms to convicted felons. Again, the NRA was behind the scenes pressuring the Department.

Now, the President has publicly supported a minimum waiting period for the purchase of a handgun. I have asked each of the nominees, including you, to support the idea. You told me in my office that you could support a minimum waiting period, but when I asked for the official position of the Department I was told that the Department does support a waiting period, but that it won't send us a letter to that effect and it won't tell us the specifics of its position.

I now ask you, do you support a federally-mandated minimum waiting period for the purchase of a handgun?

Mr. CHRISTENSEN. I think I do under certain conditions, and I really believe the Department does as well, under certain conditions.

Senator METZENBAUM. Will you tell us what those conditions are?

Mr. CHRISTENSEN. Well, I think it is the position of the Department that a Federal statute should not preempt State action if a State wished to have a longer waiting period than the Federal waiting period. I think that is the——

Senator METZENBAUM. That is the only exception that you can see as far as a Federal statute is concerned? I have no difficulty with that. In fact, I would totally support that.

Mr. CHRISTENSEN. Well, that was my understanding as to what—I don't believe that the Justice Department wanted to take a position with respect to the specific language of a bill, but did support that, in concept, with that qualification.

Senator METZENBAUM. And can we look to you for your support in connection with that legislation?

Mr. CHRISTENSEN. Well, I don't set Department policy, I don't believe, but I've given you my personal view on it and I think it is consistent with the present view of the Justice Department.

Senator METZENBAUM. Will you get an official position of the Department conveyed to us so that we may know it categorically? We have asked for it in writing. We have been unable to obtain it as of this moment. Will you endeavor to get an official position conveyed to us?

Mr. CHRISTENSEN. I will endeavor to do that for you.

Senator METZENBAUM. I thank you.

Frankly, you have a man over at the Department named William Bradford Reynolds and if you are confirmed, you will be his boss. Mr. Reynolds was nominated to be Associate Attorney General and was turned down by the Senate. Mr. Meese defied the Senate and gave Mr. Reynolds a similar responsibility anyway. To the best of my knowledge, that is the first time I have heard of that occurring in government, I might say.

I recently wrote to Mr. Reynolds requesting that the Justice Department provide documents regarding a failure to investigate the intimidation of black voters in Louisiana in 1986.

The Department wrote back and, in one of the most presumptuous letters from a government agency I have ever seen, stated as follows:

> It does not readily appear that differences on matters pertaining to the executive branch's exercise of prosecutorial discretion implicates any considerations pertinent to the Committee's authorization and appropriation responsibilities.

In other words, that letter says to this committee and the appropriate committee of the House, don't inquire into what we are doing unless your questions relate to specific legislation. In my opinion, that is shocking and it is irresponsible.

What is your view of the authority of Congress to engage in oversight of the executive branch agencies?

Mr. CHRISTENSEN. You know, I don't know that I have an opinion. I haven't thought about that before. I know that you certainly have responsibilities as a part of government, and I know that the executive has responsibilities. And I understand the principle of separation of powers in general terms. To be more specific, I don't know that I could answer that.

Senator METZENBAUM. Well, I think it is a relevant question and I think it really has to do with your function at the Department, and so I would ask you to consider the matter and prior to the time this matter is submitted to the Judiciary Committee I would appreciate your responding in writing.

Mr. CHRISTENSEN. All right.

Senator METZENBAUM. I thank you, sir. Now, I would like to ask you a totally different matter. It is my understanding that you were involved with the Utah Board of Bar Examiners in a suit brought to challenge the fairness of the 1976 State bar exam.

I am not totally familiar with the facts, but I am advised that the Utah State bar exam set standards that did not comport with the ABA's efforts at that time to help women and minorities get into law school, and that the Utah State Bar Association took a position—and I am saying that this is what I understand it to be, and I think you are more familiar with it than I—which indicated that regardless of what the ABA had done, the Utah State Bar was not going to lower its standards or affect its standards in any way with respect to minorities and women.

And I am further advised that you were a moving player or maybe the lead player in that entire matter. Since I don't know all the facts and I only know pieces of it, I wonder if you would be good enough to tell us in your own words what you know about that situation.

Mr. CHRISTENSEN. Well, I don't think that situation exists or did exist in Utah. I certainly was not a player in it. I think if it did exist, I would have known about it. I think perhaps there is—maybe for clarification we need to distinguish between admission to law school and admission to the bar.

I am aware of the fact that so far as admission to law school is concerned, members of minorities were admitted on a basis where they may not have been admitted had they not been a member of a minority.

We have a number of Indians, for example, in Utah and many of those were admitted to the University of Utah Law School who may not have been admitted to law school had they not been a member of that minority.

So far as admission to the bar is concerned, the grading of the bar exam has been—at least as far as I know, always been without knowledge of who the particular person is whose paper you are reading, and so the examination process would not take into account the fact that a person was a member of a minority because the person reading the exam wouldn't even know who the writer was.

Senator METZENBAUM. Well, Mr. Christensen, I'm somewhat confused because as I understand it, a Lynn Lund was one of the plaintiffs in a suit that was brought, I gather, against the bar association, and he alleged in that suit, as I understand it, that you were one of those responsible for the original decision to fail a large number of bar applicants in 1976. According to this information, he points out that the Utah Supreme Court ultimately ruled in favor of the applicants.

Can you tell me, was there a lawsuit?

Mr. CHRISTENSEN. Yes.

Senator METZENBAUM. Were you involved in it?

Mr. CHRISTENSEN. I think that is—I perhaps misunderstood your first question. The lawsuit didn't have anything to do with minorities. The lawsuit was based upon the fact that there was a modification made in the way in which the papers were graded following a study with a committee that the deans of the two law schools in Utah were members of and some other lawyers.

And there was a recommendation made to modify the grading procedure to give a wider range of grades. Instead of like pass/fail, there would be interjected five different levels of grading.

And at the first examination following that modification in the rule, a larger percentage of the persons who sat for the bar exam failed than had failed historically, and this group, including Mr. Lund, filed a claim initially with the bar.

The bar appointed me to chair a committee to investigate those charges. We conducted hearings over a period of many months and examined each one of the unsuccessful applicants, reread the papers, made some changes with respect to those that contained errors that were ascertainable, and recommended that an additional number be admitted to the bar.

Those who were not recommended for admission then filed the suit to which you have made reference, and the Supreme Court of the State of Utah reviewed the entire process and they admitted another group.

Senator METZENBAUM. They ruled in favor of the applicants?

Mr. CHRISTENSEN. Well, some of them.

Senator METZENBAUM. And there was a charge made in that lawsuit that there had been discrimination against women and minorities?

Mr. CHRISTENSEN. No, no. There was a charge made in that lawsuit that we failed a higher percentage than we had failed historically, and I don't recall it being based upon minorities or women or anything of that nature. It was more like a quota system; it was more like an allegation of a quota.

Senator METZENBAUM. I am advised that in oral argument that that issue of discrimination against women and minorities was made by the attorney representing the applicants.

Mr. CHRISTENSEN. Well, it may have been; I don't recall.

Senator METZENBAUM. And let me ask you, as a consequence of the reexamination—or not the reexamination—of the regrading of the papers, were there more women and minorities accepted? Was it obvious on its face that a greater proportion of women and minorities were going to become members of the bar than would have been the case had the action not been filed?

Mr. CHRISTENSEN. That is not my memory of it, Senator.

Senator METZENBAUM. Can you help us get the—well, I guess we can get the supporting data or whatever the facts are in connection with that matter. I would like to inquire into it.

Now, Mr. Christensen, it is my understanding you live in a home that you purchased 26 years ago, but in the deed there is a restrictive covenant. Is that correct?

Mr. CHRISTENSEN. Well, I learned that as a part of the FBI investigation. I didn't know it until now, so to speak.

Senator METZENBAUM. Do you live in an area that is in any way integrated, or are all the homes in that area subject to similar restrictive covenants, if you now know?

Mr. CHRISTENSEN. I don't know. All I can speak to is the particular small, relatively small subdivision in which I live, and when the owner of that property subdivided it the owner put restrictive covenants in the property.

I didn't buy it directly from the owner. It had gone through possibly two or three previous ownerships and I was unaware of it. It had—that restriction had actually, by the time I bought it, expired by its terms. It was only for a number of years and it has never been an issue, so far as I know.

Senator METZENBAUM. Are there any minorities, Indians, blacks, Asians?

Mr. CHRISTENSEN. Yes, there are Asians. There are no blacks living in that subdivision. There are Asians.

Senator METZENBAUM. Are there any Jews?

Mr. CHRISTENSEN. Pardon me?

Senator METZENBAUM. Are there any Jews?

Mr. CHRISTENSEN. Are there——

Senator METZENBAUM. Are there any Jews in your subdivision?

Mr. CHRISTENSEN. Yes.

Senator METZENBAUM. All right. I have no further questions at this time, Mr. Chairman.

Senator KENNEDY. The Senator from Utah.

Senator HATCH. Well, thank you, Senator Kennedy.

Welcome to the committee, Hal, and we are glad to have this hearing finally held and we look forward to your confirmation.

On that last question, I'm sure you are aware of the Supreme Court case *Shelley* v. *Kramer*, which, of course, has outlawed all those restrictive covenants.

Mr. CHRISTENSEN. Yes.

Senator **Hatch**. And I think a number of people have found that they may have those on their deeds without ever knowing it.

On the Judge Ritter matter, I just thought I would take a second with you on that. As I viewed that, that was an extremely trivial matter at the time. It wasn't to Mr. Petrofsky, but it was treated—in the end it proved to be quite trivial.

And if I understand correctly, one of your partners, John Snow, agreed to represent Judge Ritter, but he did so basically on his own. Is that correct?

Mr. **Christensen**. Yes. He signed—as far as I know, he signed all the pleadings in his individual capacity.

Senator **Hatch**. Well, it is my understanding he did not even use firm resources during the defense of that matter.

Mr. **Christensen**. I really don't know that much about it, whether he did or didn't.

Senator **Hatch**. Okay.

Mr. **Christensen**. I assume he did it on his own.

Senator **Hatch**. But he was not acting for or with the firm when he represented Judge Ritter, as I understood it.

Mr. **Christensen**. Pardon me?

Senator **Hatch**. He was not acting for or with the firm when he represented Judge Ritter in that matter.

Mr. **Christensen**. No, he was not.

Senator **Hatch**. Well, I think that is an important thing. In the bygone ages that was the way those matters were handled. Generally, an attorney would do it on his own without involving the firm, and I think that has been done in times past, even though probably under present circumstances it would have to be different.

In fact, there were other firms in Salt Lake City who handled various matters for Judge Ritter as well, is that correct?

Mr. **Christensen**. Yes.

Senator **Hatch**. And I think some of those did not take the precaution of really severance or of having the attorney sever ties with the firm during some of that matter.

Mr. **Christensen**. That is correct.

Senator **Hatch**. In any event, the real question I have is, do you think that this or any other matter would have influenced Judge Ritter?

Mr. **Christensen**. No, I do not.

Senator **Hatch**. I tried a lot of cases before Judge Ritter and each case was a brand new experience, was what I thought.

Mr. **Christensen**. I know what you mean.

Senator **Hatch**. Is that a fair appraisal? Do you know what I mean?

Mr. **Christensen**. Yes, I certainly do.

Senator **Hatch**. And, frankly, I was one of those who, even though I disagreed with many things that he did, was very respectful of him as a legal intellect and as a judge, and I suspect you share that viewpoint as well.

We are going to have a vote and, frankly, I don't really have any other questions. Let me just take 2 minutes and go through just a little bit the line of questions that Senator Thurmond did.

You have only been at the Justice Department a month or so, is that correct?

Mr. **Christensen**. Yes.

Senator **Hatch**. But some have felt that that particular period of time might have been the period of the deepest malaise, as defined by certain segments of the media. And you have said here that you did not find any malaise or, you know, any downcast people there; that they were energetic, upbeat, and doing their job. Is that correct?

Mr. **Christensen**. Yes, that is correct.

Senator **Hatch**. Have you had much chance to get around and meet many of the attorneys or many of the top staff people other than the ones that are directly responsible to you?

Mr. **Christensen**. Well, I have met a number, and I have tried to meet as many people as I can, given the time constraints.

Senator **Hatch**. Sure.

Mr. **Christensen**. And I have met a large number of people.

Senator **Hatch**. And have you found any of this malaise among any of the people that you have met?

Mr. **Christensen**. No. I have found a sense of enthusiasm, rather.

Senator **Hatch**. Well, let me ask you this. Have you found anybody who has said that Mr. Meese has unduly influenced them or tried to influence them or used politics or made political judgments there at the Justice Department?

Mr. **Christensen**. I have not heard that.

Senator **Hatch**. Have you had any of them be basically critical of Mr. Meese in the way he has handled the Department?

Mr. **Christensen**. I have not heard that. I think they are very supportive of Mr. Meese.

Senator **Hatch**. Have you had any occasion where you consider that Mr. Meese has improperly or—well, I will just use the word "improperly"—improperly tried to influence you in the conduct of your duties?

Mr. **Christensen**. No.

Senator **Hatch**. Has he basically delegated the function to you and allowed you to perform without much comment?

Mr. **Christensen**. That is correct.

Senator **Hatch**. But you meet with him regularly?

Mr. **Christensen**. I do.

Senator **Hatch**. How often do you meet with him?

Mr. **Christensen**. At least every day.

Senator **Hatch**. So you meet with him every day that he is in town?

Mr. **Christensen**. I meet with him at least once every day, usually two or three times every day.

Senator **Hatch**. And I take it that involves the highest functions of the Justice Department and the wide, expansive embrace of all of the Justice Department functions?

Mr. **Christensen**. Yes, it does.

Senator **Hatch**. Have you noticed that he has acted in any way out of step with the highest ethical and legal values of that Department?

Mr. **Christensen**. No, I have not.

Senator HATCH. I'm sure there are people there who probably could find some criticism of Mr. Meese or you or anybody else, because that is the nature of people who work together.

But my experience has been the same as I have chatted with various people, and I have given them plenty of leeway to be critical down there. And I have done some checking on my own and I have not found this so-called malaise or demoralization that has been described.

I'm sure there are those who are there, but for one reason or the other the people I have discussed it with say that they pretty well characterize it the way you do that the Department is enthusiastically going ahead, doing its job, and doing a very good job by comparable standards with any other prior Justice Department. Is that what your findings basically are?

Mr. CHRISTENSEN. Pardon me?

Senator HATCH. Is that consistent with your findings?

Mr. CHRISTENSEN. Yes, it is.

Senator HATCH. Well, I know when I was practicing law in Salt Lake I can remember my Utah legal colleagues advising me that the best way to ensure success out there was to emulate you, to conduct myself in the same manner that you did in court and in the management of any law firm. That is a fact, and I think many people in Utah would testify to that, to your personal ethics and legal skills and legal ability and demeanor and deportment and the way you handled your positions.

So I am anxious to see your management skills, your vast talents, your legal skills, your litigation skills brought to bear down there at the Justice Department, especially among the litigating attorneys.

So I am going to ask you, will you supervise or at least try to supervise enough trial litigation at the Department to pass on your formidable skills to the attorneys there? Have you given any thought to teaching a litigation strategy course at the Department?

Mr. CHRISTENSEN. I have, and I would like that opportunity.

Senator HATCH. Well, I think it would be a good thing for you to do. This administration only has a number of months left, but in that period of time I think a lot of the career lawyers there would benefit greatly from somebody who has come from the outside, but who has had a wide experience in litigation as you have had. I think they would benefit greatly and this country would benefit greatly many years beyond the tenure that you serve there. So I would like to suggest that to you.

I have other questions, but I think I will just reserve those and just welcome you again to the committee, thank you for being willing to give of yourself for this public service and, frankly, just express again my total regard for you as a human being and as one of the leaders in this country.

Mr. CHRISTENSEN. Thank you, Senator Hatch.

Senator KENNEDY. I will have to go over and vote, but I must say, you know, your testimony today suggests that you think there are no problems with the Attorney General or the Justice Department.

Frankly, in light of the McKay report and the other testimony we have heard this week, I find that somewhat incredible.

Senator HATCH. I don't think he said there are no problems.

Senator KENNEDY. I find that somewhat incredible, quite frankly, Mr. Christensen. I mean, here you have taken the time to talk to everyone within the Department. You are down there and they have said everything is fine.

Mr. CHRISTENSEN. The people that——

Senator KENNEDY. You have two very high, professional, distinguished attorneys that were the Deputy Attorney General and head of the Criminal Division that resigned because of the matters which they have outlined here in this committee and have been generally reported.

And the concern I have is whether you are going down there with blinders on.

Mr. CHRISTENSEN. I don't think so, Senator.

Senator KENNEDY. Well, we will have a chance to get into it a little more afterwards. I would recognize the Senator from Pennsylvania. We have to go over and vote.

Senator SPECTER. Thank you, Mr. Chairman.

Mr. Christensen, I have already gone to vote earlier, so I may have missed some of your testimony and if I cover any of the same ground, you will know it was because I was absent earlier.

Let me congratulate you at the outset for being willing to take on this responsibility. I have had the opportunity to meet with you informally in the so-called courtesy call, and I have reviewed your résumé and you do have an outstanding record.

There are two areas that I want to discuss with you today concerning the general responsibility of the Department of Justice to respond to directions by the Congress in committee reports and, secondly, the specific action or lack of action by the Department of Justice on a committee report in 1986 concerning a task force for the city of Philadelphia on drugs.

And you have some familiarity with this matter because you and I talked briefly by telephone about it on Monday of this week, and then I pursued the matter with Mr. Keating and with Mr. Dennis, who were cooperative and came to my office for meetings on Monday and Tuesday.

And I pursued this matter at some length with Mr. Keating yesterday and said at the time that I would be directing this line of questioning to you because I think it is a very important subject matter, and it involves the response of the executive branch to a direction by the Congress in a committee report.

We have in the Senate, in the Congress, limited opportunities to really see to it that our assessment of priorities is carried out. When the Congress passes legislation and puts it in a bill, that has a stronger command, stronger legal import, than when we put it in a committee report.

But there has been a tremendous amount of litigation under the Impoundment Act and there are a variety of procedures which the executive branch can undertake on rescissions and deferrals to thwart what is the establishment by Congress of legislative priorities.

And it sometimes occurs that our sole recourse is really at a particular point in time when the executive branch comes to the Senate, as in your case, to request confirmation. And recognizing the need for your services in the Department and recognizing your outstanding record, I have a considerable constraint, Mr. Christensen, and I want to tell you this head-on right at the start, about seeing you confirmed if there is not a satisfactory resolution of the approach of the executive branch on this important issue, and then a secondary question, the action which will be taken by the Department on the direction by the Congress on the special task force for the city of Philadelphia. So I want to make that statement really at the very outset.

When Mr. Frank Keating and I discussed this matter yesterday—and, of course, he was up for confirmation hearings for the number three position right behind you for Associate Attorney General—and I asked him about the response by the Department and he said that he would give heavy weight to what the Congress had said, I said to him candidly that that was not a satisfactory answer as far as this Senator was concerned.

And I think it is appropriately really to take the matter up with you, and I will take it up with the Attorney General-designate when his confirmation hearings occur. I did not take it up with Mr. Dennis because it seems to me that the top three positions in the Justice Department are really sufficient and appropriate for this purpose.

My question to you, Mr. Christensen, is what response would you give as Deputy Attorney General, if confirmed, to language in the 1986 appropriation bill for fiscal year 1987 which contains language of direction on quite a number of items illustrated by the language at page 30 of the appropriations bill covering the Department of Justice which says:

> The committee directs the Executive Office for U.S. Attorneys to assign four assistant U.S. attorneys, as well as support staff, to the Philadelphia demonstration effort to focus on narcotics prosecutions; the committee's recommendation for the U.S. attorneys includes an enhancement for the criminal program for narcotics and dangerous drug litigation and expects that these new positions will be absorbed within this increase.

So you have a specific appropriation and you have a specific direction. Now, if you are confirmed as Deputy Attorney General, what would your response be, in general, to this kind of a direction from the Congress?

Mr. CHRISTENSEN. Senator, I really don't think I could answer that. I would need to have the input of others in the Department as to what would be the appropriate response to that, and I don't think I could say specifically.

Generally, I would hope to be as responsive to the Congress as my duties will permit; I would. I would want to be responsive to you, but as to what a specific response would be under a given set of circumstances, I cannot say.

And with specific reference to this 1986 bill, after you and I talked, I referred it to Mr. Keating. Mr. Keating told me that he had arranged a meeting with you that day and I was later informed that the meeting that you and I had set up for later on was being canceled, and I gave no further thought to that until you just put it to me again here today.

And I'm sorry that I'm not able to respond better, but I don't have enough familiarity to do so.

Senator **Specter**. Well, Mr. Christensen, I appreciated when we talked on the telephone on Monday that you were willing to set up a meeting for Wednesday.

Mr. **Christensen**. Yes.

Senator **Specter**. I felt a greater sense of urgency and I found that Mr. Keating was able to meet with me in advance. We met later on Monday and then had a second meeting on Tuesday, because I view the Philadelphia drug situation as an emergency.

But I had said yesterday that I would be taking this topic up with you today, and I can understand that it is a complex subject and you may wish to study it before making a response.

But so far as this Senator is concerned, I want a response on it before you are voted out of committee, before your nomination comes to the floor. One Senator only has so much to say, but I want you to know precisely where I stand.

When you comment about a response on the specific circumstances, I am not asking you about specific circumstances. I am asking you for an overall approach as to what you would do in the number two spot in Justice where you have committee language with a direction and a specific appropriation.

It may be appropriate at this time to give some of the background for my concern on this subject. I have been concerned for some time as I have reviewed the law on the subject as to where we have gone on congressional appropriations in the following of the Impoundment Act.

The law has evolved that if it is in the legislation, then it is a requirement. But notwithstanding that—and there is a distinction between legislation and committee report, and here we have the lesser category of committee report language.

But even when the matter is within the language of an appropriations bill, there have been many ways for the executive branch to defeat what is in a bill, and I refer specifically to the extensive series of maneuverings by the executive branch on the juvenile justice appropriations when I was chairman of that subcommittee.

And I will ask unanimous consent—it doesn't take too much for unanimous consent here at the moment, since I am the only one present—that the legislation history be included in the record.

[Information follows:]

United States Senate

MEMORANDUM

CHRONOLOGY OF YOUR INVOLVEMENT WITH IMPOUNDMENT OF JUVENILE JUSTICE FUNDS IN 1985-86

December 18, 1985	You wrote to OMB Director Miller and Attorney General Meese
	You introduced S.Res. 278 -- "That the Senate hereby disapproves the current informal freeze, in the absence of a formal rescission request, on funds of the OJJDP."
December 19, 1985	The Senate passed S.Res. 278 by voice vote.
February 5, 1986	You introduce S.Con.Res. 106 disapproving the rescission request for FY86 juvenile justice funds.
March 5, 1986	You chair a Juvenile Justice Subcommittee hearing on the funding freeze.
	You introduce S.Con.Res. 106 disapproving the rescission request for FY86 juvenile justice funds.
April 1986	The freeze was lifted.

ATTACHMENTS

IMPOUNDMENT AND REPORT LANGUAGE

IMPOUNDMENT CONTROL ACT OF 1974

Under the Impoundment Control Act, 2 U.S.C. 681, the President may initiate two types of impoundment actions: deferrals and rescissions.

The Act enables the President to propose that budget authority be rescinded if he determines that it "will not be required to carry out the full objectives or scope of programs for which it is provided or that such budget authority should be rescinded for fical policy or other reasons (including the termination of authorized projects or activities for which budget authority has been provided) ...." 2 U.S.C. 683(a).

A deferral is a withholding or delay in the obligation or expenditure of budget authority. 2 U.S.C. 682(1).

A deferral proposed by the President stands unless Congress passes a law disapproving the postponement. A rescission proposed by the President does not occur unless Congress passes a law approving the cancellation. (The Congressional Budget Process, Senate Print 100-89 (Mar. 1988) at 11.)

CASES

The U.S. Supreme Court considered the issue of executive compliance with appropriations laws, holding that "legislative intention, without more, is not legislation." Train v. City of New York, 420 U.S. 35, 45 (1975). The established principle is that report language is not legally binding. The Comptroller General of the United States ruled: "[S]ubdivisions of an appropriation contained in any agency's budget request or in committee reports are not legally binding upon the department or agency concerned, unless they are specified in the appropriation act itself." (Comptroller General Decision B-184830, 55 Comp. Gen. 812, 819-20 (1976), quoted in Human Resources Development Institute, Inc. v. Donovan, 587 F. Supp. 617, 620 (D.D.C. 1983).) The Comptroller General also held: "[W]hen Congress merely appropriates lump-sum amounts without statutorily restricting what can be done with those funds, a clear inference arises that it does not intend to impose legally binding restrictions, and indicia in committee reports and other legislative history as to how the funds should or are expected to be spend do not establish any legal requirements on federal agencies." (Comptroller General Decision B-183851, 55 Comp. Gen. 307, 319 (1975), quoted in id. at 620.)

The courts also have held that report language is not legally binding. The Federal District Court for the District of Columbia noted that the assertion that "the committee report's language with respect to a particular appropriation is a mandatory direction rather than a recommendation" binds an executive officer to comply is not supported by the holdings. Id. at 620. Likewise, "while [committee] reports are unquestionably entitled to weight in determining the purpose of a statute they are neither enacted by Congress nor signed by the President, and thus they do not have the force of legislation." Associated Electric Cooperative, Inc. v. Morton, 507 F.2d 1167, 1174 (D.C. Cir. 1974), cert. denied, 423 U.S. 830 (1975).

However, the courts have rejected, expressly or implicitly, the existence of "inherent constitutional power in the Executive to decline to spend in the face of a clear statutory intent and directive to do so." National Council of Community Mental Health Centers, Inc. v. Weinberger, 361 F. Supp. 897, 901 (D.D.C. 1973).

Courts also have distinguished between "programmatic" and "policy" deferrals. The court in City of New Haven v. United States stated: "The critical distinction between 'programmatic' and 'policy' deferrals is that the former are ordinarily intended to advance congressional budgetary policies by ensuring that congressional programs are administered efficiently, while the latter are ordinarily intended to negate the will of Congress by substituting the fiscal policies of the Executive Branch for those established by the enactment of budget legislation." 809 F.2d at 901. The court held that the Executive no longer has a statutory basis for delaying the expenditure of appropriated funds for "policy" as opposed to "programmatic" reasons. Id. at 909.

OMB AND REPORT LANGUAGE

Recently, OMB Director Miller announced the policy that report language is not binding on executive branch agencies. In light of intense congressional reaction, Miller reversed his position and directed federal agencies that spending this year should be guided by the FY 1988 Continuing Resolution report language.

Below is a chronology of this conversion:

March 15, 1988.	Memorandum for Cabinet Officers and Agency Heads from OMB Director Miller

"I remind you, and ask that you remind all employees of your agency, that Congressional reports have no force of law. They are not approved by vote on the floor of either House of Congress, nor are they presented to the President for his signature."

April 19, 1988	Letter to the Chairmen of the Senate and House Appropriations Committees from OMB Director Miller

"In my memorandum of March 15, 1988 I reminded the agencies that Congressional reports are not legally binding." (P. 1)

July 8, 1988	Memorandum for Canbinet Officers and Agency Heads from OMB Director Miller

"On March 15, 1988, I advised you that the spending directives included in [appropriations committee reports] do not have the force of law....[T]his distinction between law and legislative history is fundamental, and we must uphold it."

"After numerous discussions with the Congressional leadership on the issue of FY 1988 spending, however, I think it clear that for FY 1988 appropriations individual Members of Congress relied on what they perceived to be a former practice of funding projects identified in Committee reports. I am convinced that their sincere views deserve consideration as a matter of comity between the Branches. Accordingly, you may use your discretion in obligating funds under the FY 1988 Continuing Resolution, taking into consideration the legislative history as expressed in the accompanying Committee reports."

ATTACHMENTS

Miller memoranda, related articles

MJR 7-27-88

No. 176—Part II

Congressional Record

United States of America

PROCEEDINGS AND DEBATES OF THE 99th CONGRESS, FIRST SESSION

Vol. 131 WASHINGTON, WEDNESDAY, DECEMBER 18, 1985 No. 176—Part II

Senate

(Legislative day of Monday, December 9, 1985)

SENATE RESOLUTION 278—RELATING TO FUNDING FOR THE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION

Mr. SPECTER (for himself, Mr. LAUTENBERG, Mr. CRANSTON, Mr. SIMON, and Mr. MCCONNELL) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 278

Resolved, That the Senate hereby disapproves the current informal freeze, in the absence of a formal rescission request, on funds of the Office of Juvenile Justice and Delinquency Prevention.

Mr. SPECTER. Mr. President, I submit today a resolution in response to a very disturbing situation which has arisen within the Department of Justice regarding the freezing of funds for the Office of Juvenile Justice and Delinquency Prevention [OJJDP].

It has come to my attention that the Office of Management and Budget has informally recommended to the Department of Justice the rescission of all fiscal year 1986 appropriations for the Bureau of Justice Assistance [BJA] and OJJDP. The Justice Department sought a reconsideration of the proposed rescission of appropriations for BJA. The Department did not, however, seek to avoid the rescission request as to OJJDP funds.

I have been deluged by calls from organizations which currently receive OJJDP grants, and have learned that all OJJDP funds, including their grant moneys now due, have been frozen pending the resolution of the rescission request. This action will halt extremely important studies on juvenile delinquency, which OJJDP has been funding.

The administration has ordered OJJDP not to spend any of its funds until the rescission issue is resolved, notwithstanding that Congress has not yet received a formal notice of a proposed deferral or rescission of OJJDP funds pursuant to the Impoundment Control Act of 1974. A formal rescission notice from the Administration is not expected to be received by Congress until the end of January 1986, at which time the 45-day time period begins for congressional action.

Mr. President, a delay of over 2 months in Federal funding will impose undue hardship on existing and proposed juvenile justice programs nationwide

This informal freeze, which also includes unspent fiscal year 1985 funds, plainly violates the Impoundment Control Act of 1974. Moreover, it is a slap in the face to Congress, which repeatedly has rejected every single attempt by the administration to limit or eliminate the funding of OJJDP.

On October 29, 1981, the administration formally proposed deferral of OJJDP funds. In response, on December 15, 1981, the Senate passed Senate Resolution 260, which I introduced, expressing its disapproval of the deferral request.

Each year since 1983, the administration has requested zero funding for OJJDP, and each year Congress has provided level funding of $70 million. In the face of continued administration attempts to eliminate funding for this important office, the Congress in 1984 reauthorized OJJDP for an additional 5 years.

Because Congress has repeatedly rejected the proposed eliminations of OJJDP and continued to fund the Office at this level, an effort has been made to eliminate the Office's functions de facto, by having it not spend the appropriated funds. Earlier this year, the administration requested reprogramming of $12.2 million in unspent fiscal year 1984 juvenile justice funds for other purposes. The Senate Committee on Appropriations adopted, and the full Senate passed, an amendment to the fiscal year 1985 supplemental appropriations bill which rejected this subterfuge and directed that these funds be preserved for OJJDP. Conference report language specifically directed that these funds be allocated to the States within the parameters of the law.

Finally, last month the Senate was notified that the Administrator of OJJDP had failed to spend $13.665 million in appropriated funds. Only a few days ago, Congress again appropriated $70 million for fiscal year 1986 and, in the conference report, directed OJJDP to spend the fiscal year 1985 carryover funds in fiscal year 1986, spend the fiscal year 1986 appropriation in fiscal year 1986, and submit to Congress quarterly reports regarding obligations and expenditures for the previous quarter and proposed obligations and expenditures for the forthcoming quarter.

Against this backdrop, the current Justice Department freeze of OJJDP funds can only be considered a direct and clear violation of the directive of the Congress. It would be a travesty for the Administrator's first quarterly report to Congress, due on January 1, 1986, to reflect zero expenditures.

The Department's informal policy to freeze OJJDP funds already has disrupted many vital juvenile justice programs nationwide. A very serious situation has been created by this freeze and anticipated rescission request; numerous juvenile justice projects nationwide are likely to cease even if there is only a slight delay in the receipt of Federal funds.

As chairman of the Senate Juvenile Justice Subcommittee and cochairman of the Senate Children's Caucus, I have held numerous oversight hearings on OJJDP, and the proceedings repeatedly have highlighted the importance of preserving this Office. The testimony presented at subcommittee hearings illustrates the compelling need for the Federal Government to do more, no less, to address the problems facing young Americans today. Continued operation of OJJDP consistent with congressional intent is an important step towards this goal.

There are thousands of people who administer, need, and benefit from juvenile justice programs nationwide. Funding of these programs is desperately needed. Approval of this resolution by the Senate before it goes out of session will help insure the continuation of this important juvenile justice

I have written to Attorney General Edwin Meese and Office of Management and Budget Director James Miller to express my extreme concern regarding the freeze and anticipated rescission proposal of OJJDP funds. I now urge my colleagues to support this resolution to avert the impending crisis in juvenile justice funding.

Mr. President, I ask that letters from various juvenile justice groups to Attorney General Edwin Meese be printed in the RECORD.

There being objection, the letters were ordered to be printed in the RECORD, as follows:

NATIONAL COALITION OF STATE
JUVENILE JUSTICE ADVISORY GROUPS,
Cape Elizabeth, ME, December 18, 1985.

Hon. EDWIN MEESE,
Attorney General, Department of Justice, Washington, DC.

DEAR MR. ATTORNEY GENERAL: On behalf of the National Coalition of State Juvenile Justice Advisory Groups, I am compelled to convey my grave concern and deepest disappointment at the action of the Administration in regard to the proposed budget which recommends deletion of fiscal year 1986 funds for Juvenile Justice. It is unquestionable that this action flies in the face of repeated expressions of Congress that the Juvenile Justice Program be continued.

Upon notice that this proposal would be submitted, the Office of Juvenile Justice and Delinquency Prevention placed a "hold" on all unobligated fiscal year 1985 funds and all fiscal year 1986 funds. Such an action, particularly in regard to fiscal year 1986 appropriations, will place the states in an extremely difficult position. As you know, the fiscal year began October 1, 1985, and the funds in question are desperately needed by states to continue programs and operations. Because the funding cycle for some state programs begins in the first part of the current year, some state programs find themselves in serious jeopardy. Without the fiscal year 1986 funds, many programs designed and developed to cover any period of time will be terminated without any ability to permit assumption of their costs by state and local governments. Many discretionary programs, moreover, are subject to immediate termination. In addition, most states cannot insure the integrity of Federal funds already in the cycles, absent the Administration funds provided by the Act. It appears to me outrageous not only that many important programs may be terminated, but that this action also jeopardizes the ability of the states to provide accountability for current Federal program funds.

This action is strongly reminiscent of the actions of former President Nixon when he impounded funds appropriated by the Congress. Congress's response at that time was to pass the Budget Impoundment and Control Act. I sincerely, hope that you will reconsider this similar highhanded attempt to subvert the will of Congress.

Very truly yours,

A. L. CARLISLE,
Chair, National Coalition.

THE NATIONAL PTA,
Chicago, IL, December 18, 1985.

Hon. EDWIN MEESE, III,
Attorney General, U.S. Department of Justice, Washington, DC.

DEAR ATTORNEY GENERAL MEESE: I am writing on behalf of the 5.6 million members of the National Congress of Parents and Teachers (National PTA) in regard to funding of the Office of Juvenile Justice and Delinquency Prevention. The National PTA is outraged to learn that a rescission has been proposed for this vital program and that all OJJDP monies have been impounded. It is our understanding also, that the Department of Justice did not appeal this rescission.

The National PTA, urgently requests that the Department of Justice immediately appeal this rescission and release for obligation all monies appropriated for OJJDP by the Congress. Inaction on the part of the Department in this regard would bring to a halt juvenile justice programs in the States and local communities throughout the country, thus threatening the well being of our youth and our communities. Such an outcome would be a total contradiction of the national resolve that juvenile justice and delinquency prevention is a federal priority. Congress passed and, last week, President Reagan signed into law the FY 1986 appropriations for the Department of Justice, including level funding of the OJJDP.

The Office of Juvenile Justice provides the national leadership, the incentives, and the seed money that is absolutely necessary for states to implement programs that will accomplish the goals of the Juvenile Justice and Delinquency Act. The National PTA appeals to you to ensure that the historic federal leadership role in juvenile justice is maintained by appealing the OMB rescission and allowing OJJDP to continue its important responsibilities to our nation.

Sincerely,

MILLIE WATERMAN,
Vice President for Legislative Activity.

DECEMBER 18, 1985.

Hon. EDWIN MEESE III,
Attorney General, U.S. Department of Justice, Washington, DC.

DEAR MR. ATTORNEY GENERAL: As Co-Chairmen of the Ad Hoc Coalition for Juvenile Justice and Delinquency Prevention, we are writing to express our strong opposition to the recent "freeze" placed on funding of the Office of Juvenile Justice and Delinquency Prevention (OJJDP). We respectfully urge you to reverse this decision.

The Ad Hoc Coalition for Juvenile Justice, comprised of more than 40 national youth services organizations, has been a strong supporter of the Juvenile Justice and Delinquency Prevention Act. We are especially concerned of the effects which this freeze will have on efforts supported under the Act's formula grants to states provision.

Our purpose in writing at this time is not to argue the cost-effectiveness or success of the federal juvenile justice program. We will be making such a case to you at the appropriate time.

We are requesting, however, that you immediately lift the current freeze on OJJDP funds so that the legal mandates of the Act can be carried out. The intent of Congress, as recently as the December 4th action on OJJDP appropriations, is quite clear. The statutory mandates and enacted appropriations measures are to be carried out.

As our nation leading law enforcement official, we are confident that you are committed to carrying out the law of the land, in this case, the JJDP Act as signed by the President. This current freeze clearly violates the letter and spirit of the law.

Again, we urge the immediate lifting of the freeze. We welcome the opportunity to meet with you and your staff to discuss ways that the Act can better protect the youths and communities that all of us are committed to protecting.

Sincerely,

SHARON MARTIN,
Co-Chair, The Ad Hoc Coalition, YMCA of the USA.

DONALD W. MATHIS,
Co-Chair, The Ad Hoc Coalition, National Network of Runaway and Youth Services.

NATIONAL FUND FOR RUNAWAY CHILDREN, THE NATIONAL NETWORK OF RUNAWAY AND YOUTH SERVICES, INC.
Washington, DC, December 18, 1985.

Hon. EDWIN MEESE III,
Attorney General, U.S. Department of Justice, Washington, DC.

DEAR ATTORNEY GENERAL MEESE: The National Network of Runaway and Youth Services, comprised of more than 1,200 member agencies across America, is writing to you to oppose the recent freeze on funds which has been placed on programs administered by the Office of Juvenile Justice and Delinquency Prevention (OJJDP). This highly arbitrary and unsound decision is creating immediate havoc with state and local, public and private juvenile justice programs.

This freeze, which has not even been formally submitted to the Congress as a rescission, is puzzling at best. Given the appropriations cut time line of March 1st by Gramm/Rudman, a freeze at this time places extreme and unanticipated hardship on programs including law enforcement, judges, probation, and a myriad of youth services agencies. This freeze is bad policy and should be lifted immediately.

As you well know, Congress has passed and President Reagan has signed both the reauthorization and appropriation legislation which provide for the Juvenile Justice and Delinquency Prevention Act. I strongly urge you to fulfill these statutory mandates and immediately lift the freeze on OJJDP. Thank you for your consideration of the National Network's position opposing the OJJDP freeze.

Sincerely,

JUNE BUCY,
Executive Director.

United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510

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NEAL S. MANNE, CHIEF COUNSEL AND STAFF DIRECTOR

December 18, 1985

The Honorable James C. Miller III
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Director Miller:

I write to express to you -- as I have to Attorney General Meese -- my extreme concern about the current policy of the Office of Management and Budget and the Department of Justice regarding the funds of the Office of Juvenile Justice and Delinquency Prevention (OJJDP).

I have been advised that the Office of Management and Budget has informally recommended to the Department of Justice the rescission of all fiscal year 1986 appropriations for the Office of Justice Assistance (OJA), OJJDP, and other programs. As you know, the Justice Department recently sought a reconsideration of the rescission of appropriations for OJA. The Department did not, however, seek to avoid the rescission request as to OJJDP funds.

I have been deluged by calls from various organizations in Pennsylvania and nationwide, which currently receive OJJDP grants, and have learned that all OJJDP funds, including their grant monies now due, have been frozen pending the resolution of the rescission request. For example, a program director in Philadelphia has informed me that he was called by OJJDP on December 16, 1985, and informed that his research grant funds were frozen. This action will halt his extremely important longitudinal studies on juvenile delinquency, which OJJDP has been funding.

The Administration has ordered OJJDP not to spend any of its funds until the rescission issue is resolved, notwithstanding that Congress has not yet received a formal proposal of deferral or rescission of OJJDP funds pursuant to the Impoundment Control Act of 1974.

This informal "freeze," which also includes unspent FY 1985 funds, plainly violates the spirit, if not the letter, of the Impoundment Control Act of 1974. Moreover, it is a slap in the face to Congress, which repeatedly has rejected every single attempt by the Administration to limit or eliminate the funding of OJJDP.

On October 29, 1981, the Administration formally proposed deferral of OJJDP funds. In response, on December 15, 1981, the Senate passed S.Res. 260, which I introduced, expressing its disapproval of the deferral request.

Each year since 1983, the Administration has requested zero funding for OJJDP, and each year Congress has provided level funding of $70.282 million. In the face of continued Administration attempts to eliminate funding for this important office, the Congress in 1984 reauthorized OJJDP for an additional 5 years.

Because Congress has repeatedly rejected the proposed eliminations of OJJDP and continued to fund the Office at this level, an effort has been made to eliminate the Office's functions de facto, by having it not spend the appropriated funds. Earlier this year, the Administration requested reprogramming of $12.2 million in unspent FY 1984 juvenile justice funds for other purposes. The Senate Committee on Appropriations adopted, and the full Senate passed, my amendment to the FY 1985 supplemental appropriations bill which rejected this subterfuge and directed that these funds be preserved for OJJDP. Conference report language specifically directed that these funds be allocated to the states within the parameters of the law.

Finally, last month the Senate was notified that the Administrator of OJJDP had failed to spend $13.665 million in appropriated funds. Only a few days ago, Congress again appropriated $70.282 million for FY 1986 and, in the Conference report, directed OJJDP to spend the FY 1985 carry-over funds in FY 1986, spend the FY 1986 appropriation in FY 1986, and submit to Congress quarterly reports regarding obligations and expenditures for the previous quarter and proposed obligations and expenditures for the forthcoming quarter.

Against this backdrop, the current Justice Department freeze of OJJDP funds can only be considered a direct and clear violation of the directive of the Congress. It would be a travesty for the Administrator's first quarterly report to Congress, due on January 1, 1986, to reflect zero expenditures.

The Department's "informal" policy to freeze OJJDP funds already has created serious disruptions of many vital juvenile justice programs nationwide. I strongly urge you to immediately unfreeze the OJJDP funds appropriated by Congress and to have the rescission request withdrawn.

Sincerely,

Arlen Specter

AS:nmv

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510

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HOWARD M. METZENBAUM, OHIO
NEAL S. MANNE, CHIEF COUNSEL AND STAFF DIRECTOR

December 18, 1985

The Honorable Edwin Meese III
Attorney General
Department of Justice
Tenth Street and Constitution Avenue, N.W.
Washington, D.C. 20530

Dear Attorney ~~General Meese~~ Ed:

I write to express my extreme concern about the Department of Justice's current policy regarding the funds of the Office of Juvenile Justice and Delinquency Prevention (OJJDP).

I have been advised that the Office of Management and Budget has informally recommended to the Department of Justice the rescission of all fiscal year 1986 appropriations for the Office of Justice Assistance (OJA), OJJDP, and other programs. As you know, the Justice Department, on December 13, 1985, sought a reconsideration of the rescission of appropriations for OJA. The Department did not, however, seek to avoid the rescission request as to OJJDP funds.

I have been deluged by calls from various organizations in Pennsylvania and nationwide, which currently receive OJJDP grants, and have learned that all OJJDP funds, including their grant monies now due, have been frozen pending the resolution of the rescission request. For example, a program director in Philadelphia has informed me that he was called by OJJDP on December 16, 1985, and informed that his research grant funds were frozen. This action will halt his extremely important longitudinal studies on juvenile delinquency, which OJJDP has been funding.

The Administration has ordered OJJDP not to spend any of its funds until the rescission issue is resolved, notwithstanding that Congress has not yet received a formal proposal of deferral or rescission of OJJDP funds pursuant to the Impoundment Control Act of 1974.

This informal "freeze," which also includes unspent FY 1985 funds, plainly violates the spirit, if not the letter, of the Impoundment Control Act of 1974. Moreover, it is a slap in the face to Congress, which repeatedly has rejected every single attempt by the Administration to limit or eliminate the funding of OJJDP.

On October 29, 1981, the Administration formally proposed deferral of OJJDP funds. In response, on December 15, 1981, the Senate passed S.Res. 260, which I introduced, expressing its disapproval of the deferral request.

Each year since 1983, the Administration has requested zero funding for OJJDP, and each year Congress has provided level funding of $70.282 million. In the face of continued Administration attempts to eliminate funding for this important office, the Congress in 1984 reauthorized OJJDP for an additional 5 years.

Because Congress has repeatedly rejected the proposed eliminations of OJJDP and continued to fund the Office at this level, an effort has been made to eliminate the Office's functions de facto, by having it not spend the appropriated funds. Earlier this year, the Administration requested reprogramming of $12.2 million in unspent FY 1984 juvenile justice funds for other purposes. The Senate Committee on Appropriations adopted, and the full Senate passed, my amendment to the FY 1985 supplemental appropriations bill which rejected this subterfuge and directed that these funds be preserved for OJJDP. Conference report language specifically directed that these funds be allocated to the states within the parameters of the law.

Finally, last month the Senate was notified that the Administrator of OJJDP had failed to spend $13.665 million in appropriated funds. Only a few days ago, Congress again appropriated $70.282 million for FY 1986 and, in the Conference report, directed OJJDP to spend the FY 1985 carry-over funds in FY 1986, spend the FY 1986 appropriation in FY 1986, and submit to Congress quarterly reports regarding obligations and expenditures for the previous quarter and proposed obligations and expenditures for the forthcoming quarter.

Against this backdrop, the current Justice Department freeze of OJJDP funds can only be considered a direct and clear violation of the directive of the Congress. It would be a travesty for the Administrator's first quarterly report to Congress, due on January 1, 1986, to reflect zero expenditures.

The Department's "informal" policy to freeze OJJDP funds already has created serious disruptions of many vital juvenile justice programs nationwide. I strongly urge you to immediately unfreeze the OJJDP funds appropriated by Congress and to seek to have the rescission request withdrawn.

Sincerely,

Arlen Specter

AS:nmr

U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

21 JAN 1986

Honorable Arlen Specter
Chairman
Subcommittee on Juvenile Justice
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to your letter to the Attorney General concerning the Department's policy on the use of funds allocated to the Office of Juvenile Justice and Delinquency Prevention.

As you know, this Administration is in the process of considering its budget options for the Fiscal Year 1987 budget. This process includes fiscal year funds appropriated by the Congress. This internal review and consultation process is ongoing, and final decisions have not been made. Those decisions, once made, will be reflected in the Fiscal Year 1987 budget. You may be assured that any proposed actions with respect to Fiscal Year 1986 and prior year funds will be in accordance with all applicable law, including the Budget and Impoundment Control Act of 1974.

With regard to Office of Juvenile Justice and Delinquency Prevention funds, all pending OJP agency award actions, including those of OJJDP, recently were held for a few days in the context of potential Administration budget proposals. Agencies were advised to review the status of upcoming award activities and not to take actions which would have the effect of prematurely obligating funds.

The Office of Justice Programs has continued to process awards on a normal schedule and, until instructed otherwise, will continue to do so for all Victim Compensation and Assistance grants, Justice Assistance Fiscal Year 1985 and 1986 block applications, and OJJDP Fiscal Year 1986 Formula Grant applications. Juvenile Justice, Justice Assistance, RISS, and other discretionary grant awards requiring continuation funding have been processed and are receiving sufficient funds to carry them through any possible proposed rescission period. New competitive program actions, formally planned programs, and other potential obligation actions will be considered on a case by case basis.

The lack of even an informal "freeze" in the OJP agencies is evidenced by the fact that, of a total of 118 block and discretionary awards made during the First Quarter of FY 1986, 70 were made during the month of December (including six OJJDP awards). It was during the third week of December that the OJP review of grants occurred, and a significant number of awards were made during that week and the last week of the month.

Your concern about this matter is appreciated. However, I want to assure you that this Administration will continue to administer its funds in a responsible manner, consistent with applicable statutes.

Sincerely,
John R. Bolton
John R. Bolton
Assistant Attorney General

U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

February 11, 1986

Honorable Arlen Specter
Chairman
Subcommittee on Juvenile Justice
Committee on the Judiciary
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

I very much regret any confusion caused by my reply of January 21, 1986, to your letter to the Attorney General concerning the Department's policy on the use of funds allocated to the Office of Juvenile Justice and Delinquency Prevention. Unfortunately, between the time I signed the letter and the time it was mailed out, new instructions concerning funds for the Office of Justice Programs were received from the Office of Management and Budget.

As you know, the President's 1987 budget, submitted to Congress on February 5, 1986, proposes a rescission of $129,881,351 for the Office of Justice Programs (OJP), Justice Assistance account. Of this total, $60,797,014 of OJJDP's Fiscal Year 1986 program appropriation is proposed for rescission. In order to ensure that the total amount proposed would be available upon approval of the rescission request by the Congress, OMB issued an apportionment document on January 7, 1986, that withheld a total amount of $135,393,351 from current OJP agency obligation availability pending Congressional action on the formal rescission proposal in the President's budget. (Please note, however, that this amount -- $135,393,351 -- does not reflect the 4.3 percent sequestration required by the Balanced Budget and Emergency Deficit Control Act of 1985.)

The practical effect of the rescission order is that we are not able to award any grants with 1986 Juvenile Justice funds. It is my understanding that the vast majority of OJJDP supported programs will not be jeopardized by the proposed rescission of FY 1986 funds between now and the time Congress makes a decision on the rescission proposal. However, there may be an unavoidable disruption to some projects in three states. A number of discretionary projects which would have expired before Congress could act on the rescission proposal and which would have been continued with FY 86 funds have been given partial awards to continue operation through April 30.

You may be assured that the Department of Justice is striving to ensure the responsible administration of funds during a difficult budgetary period. Again, I regret the confusion caused by my earlier reply, and I appreciate your continued concern about this matter.

Sincerely,

John R Bolton

John R. Bolton
Assistant Attorney General

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

JAN 30 1986

Honorable Arlen Specter
United States Senate
Washington, D.C. 20510

Dear Arlen:

Thank you for your letter regarding the rescission of funds appropriated to the Office of Justice Programs and the Office of Juvenile Justice and Delinquency Prevention (OJJDP). As you know, each year the Administration labors for several months over the task of producing a Presidential Budget for the upcoming fiscal year. In the course of developing the Budget, many ideas are considered that may later be rejected for one reason or another. If it were Administration policy to publicly discuss the ideas that might or might not find their way into the Budget before the final determinations had been made, the result would be undue chaos and confusion. I am sure you understand the need, therefore, for confidentiality until the Budget decisions become final and the Budget document is made public.

Unfortunately, during this year's period of deliberation, inaccurate reports began circulating that the Administration, or OMB, had ordered the Justice Department to withhold OJJDP funds pending the final outcome of the Budget deliberations. These reports were not correct. At no time has the President, or OMB, directed any agency in the Department of Justice to withhold or freeze any funds without properly notifying Congress.

However, the President has now made most of his final budget decisions and as a result, on January 7, 1986, the Administration did take its first action to withhold the OJJDP funds in question. Accordingly, the President will be shortly sending to Congress a formal notification of the action, and will at that time request a rescission of the OJJDP funds.

I hope this addresses your concerns.

Sincerely yours,

James C. Miller III
Director

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 99th CONGRESS, SECOND SESSION

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Senate

FUNDS FOR OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION

Mr. SPECTER. Mr. President, I take the floor to call to the attention of my colleagues a hearing which has just been concluded of the Subcommittee on Juvenile Justice of the Committee on the Judiciary. This hearing, I believe, raises fundamental questions of great importance under the Constitution of the United States because of the conclusive evidence, as disclosed at this hearing, of a pattern of illegal impoundment by the executive branch in disregarding the law on expenditures for the Office of Juvenile Justice and Delinquency Prevention.

Mr. President, we are now more than 5 months in fiscal year 1986, and vital programs for juvenile justice and delinquency prevention are not being funded as Congress has mandated and as the President has concurred in signing into law on December 13, 1985, fiscal year 1986 appropriations providing for funding of $70.282 million for the Office of Juvenile Justice and Delinquency Prevention.

What has happened, Mr. President, is that there was an informal freeze put into effect on Juvenile Justice in mid-December, and the Senate passed a resolution on December 19, 1985, by unanimous consent disapproving that informal freeze. What has followed since is a submission of a rescission request on February 5, 1986, but in the interim there has been a cut-off on funding of the Office of Juvenile Justice and Delinquency Prevention, preventing these vital programs from going forward.

Mr. President, the Impoundment Control Act is plain in that the executive branch lacks the authority to cut off funding on its own initiative where funding has been mandated by Congress. There are provisions under the Impoundment Control Act for a rescission request to be submitted to Congress and if not approved by Congress within 45 days, then that rescission request does not take effect.

But absent such a rescission request, the executive branch of the U.S. Government, stated simply, does not have the authority to stop the funding which has been mandated by law. This principle has been eloquently expressed in a short statement of legislative history and I shall quote from a very brief part of that, under the Impoundment Control Act, Congressional Budget Act, Public Law 93-344, as appears on page 3471, as follows:

> A final but most important trouble spot has been the unprecedented impoundment of funds by the President. Although he claims that such impoundments are necessary because of defects in the congressional budget process, no such power is accorded the President by Constitution or law.
>
> In earlier hearings on anti-impoundment measures, distinguished and knowledgable witnesses charged that the President has overstepped his authority. The executive branch has unilaterally set aside congressionally approved programs it deems less worthy than others and nullified national policies established by Congress. Critics assert that by these acts the executive branch has encroached upon the legitimate role of Congress in establishing spending priorities, eroded Congress' constitutional and vital power of the purse, upset the delicate constitutional balance of powers between the legislative and executive branches, aggrandized executive power, exercised an item veto never authorized by Congress, and created chaos in the operations of State and local governments.

Mr. President, that is precisely what has occurred with respect to the funding in the Office of Juvenile Justice and Delinquency Prevention.

Witnesses testified today that the cutoff or freeze of funds was put into effect in mid-December of 1985, although the request for rescission was not filed until February 4, 1986, and no action was taken by the Office of Management and Budget until January 7. The Administrator of the Office of Juvenile Justice and Delinquency Prevention, Administrator Alfred S. Regnery, conceded that there may have been a rescission or freeze for 2 or 3 days in December.

The evidence, Mr. President, as developed at the hearing today, was conclusive that the freeze was for a much longer period of time, and that in fact the freeze has been in effect for 3 months on the backbone of the programs amounting to approximately $43 million of funds for State Juvenile Justice and Delinquency Prevention programs.

This Senator questioned Administrator Regnery on the legality of a freeze for even 2 or 3 days. Mr. President, there is no legality in an illegal freeze simply because it is for 2 or 3 days or any period of time which some may consider to be relatively brief. There is no justification for a violation of law for 2 or 3 days or for 2 or 3 minutes or for 2 or 3 seconds. There are disastrous acts which can be accomplished in the course of 2 or 3 seconds let alone 2 or 3 days, and to say that an illegal freeze is not illegal because it lasts only for 2 or 3 days is to say in this context that you can be a little bit pregnant. But the admission of Administrator Regnery is plain on the record that there has been illegal action in cutting off these funds and it goes far beyond, as I say, the 2 or 3 days. It really goes to a period of 3 months.

A very distinguished list of witnesses testified at today's hearing, Mr. President. Ms. A.L. Carlisle, chairman of the National Coalition of State Juvenile Justice Advisory Groups, elaborated upon very vital juvenile justice programs which are being curtailed, such as drug therapy programs, alternatives to jail, and treatment for sexually abused children. Ms. Carlisle testified about complaints received from many State administrators regarding these vital and important programs.

Prof. Marvin Wolfgang, from the University of Pennsylvania's Department of Criminology and Law, testified about the consequences of the freeze and rescission on his program.

Mr. Don Mathis, project coordinator of Centinela Valley Juvenile Diversion Project in Inglewood, Los Angeles County, gave testimony to similar effect as did Mr. Dean Dixon, executive director of Mid-Atlantic Association of Youth Services in Doylestown, PA.

Mr. President, so that the full impact of these important statements may be before our colleagues, I ask unanimous consent that their statements be printed in the RECORD.

There being no objection, the statements were ordered to be printed in the RECORD, as follows:

TESTIMONY OF A.L. CARLISLE, CHAIRMAN OF THE NATIONAL COALITION OF STATE JUVENILE JUSTICE ADVISORY GROUPS

Mr. Chairman and Members of the Subcommittee: Thank you for inviting me to appear before you today. I appreaciate the opportunity to thank all of you, in person, for all of your efforts to ensure the continuation of the Juvenile Justice and Delinquency Prevention Act. The leadership and support of this Subcommittee has been crucial to the effectiveness of the Act. As Chairman of the National Coalition of State Juvenile Justice Advisory Groups, I am pleased to have the opportunity to share, with you, some of the accomplishments of the states under the Act and the impact on the states of the freeze on FY 1986 Juvenile Justice funds and the President's request to rescind those funds.

The JJDPA provides for a partnership between the Federal, state and local governments. The Federal Government provides leadership, direction, assistance and some resources to assist states in meeting the mandates of the Act and in improving their juvenile justice systems. States, in turn, contribute their own resources to continue effective projects begun with JJDP funds and to implement needed changes in their systems. States also provide leadership and direction, often through their State Advisory Groups, which are responsible for developing and implementing comprehensive statewide plans, coordinating state juvenile justice efforts, distributing JJDP funds and advocating for new and expanded services for juveniles and improvements in the juvenile justice system. Decisions on the use of these funds are based on priorities established by the State Advisory Groups in their plans. Over one-half of the members of the State Advisory Group, including the Chair, must be private citizens, i.e., not employees of Federal, state or local governments. SAG members must have experience in the field of juvenile justice or fields related to juvenile justice. Because of their experience and location in different areas of their states, they bring with them the concerns, problems and issues of their local areas, as well as their broader experience within their own aeras of expertise—state youth-serving agencies, private non-profit agencies, schools, courts, corrections, businesses, etc. Decisions, in regard to planning and funding priorities, are based on each SAG's assessment of the needs within its own state. This flexibility enables each state to fulfill the intent of the Act in the way most suitabl for it.

This partnership, which has worked effectively for 11 years, is now in jeopardy. Wit the Administration's request to rescind th FY 1986 funds, states find themselves in difficult, if not impossible, position. With n warning at all, the FY 1986 funds were put "on hold" or "frozen" the day the President signed the appropriations bill. States were unofficially informed, in turn, that there was a freeze, that there was not a freeze, that partial awards would be made, that no awards would be made. This conflicting information came from both the Office of Juvenile Justice and Delinquency Prevention and from the Department of Justice. States were not officially informed, in writing, until February 12, when the Administrator of the Office sent states a letter saying that "FY 1986 Juvenile Justice Act funds are currently being withheld, at the direction of the Office of Management and Budget, pending a decision on a formal rescission request contained in President's Reagan's FY 87 Budget".

Formula Grant funds, which are those funds awarded to the states, were frozen in December, and none of those funds has been awarded. Some OJJDP funds, however, were excluded from the freeze. Excluded funds were funds for about six discretionary projects, funded with special emphasis funds; funds for the nonparticipating states; and some "emergency funds". It is not clear why funds for nonparticipating states were not frozen, while funds for participating states were. It is also not clear how much money was left unfrozen for "emergencies" nor for what purpose those funds will be used. A decision was evidently made to honor some commitments to some projects but not to honor commitments to the states. Many states had submitted their plans to the Office for approval in the Fall, before the appropriations bill had even passed. The Office could have recognized its commitment to the states by awarding at least partial allocations to those states whose plans had been submitted and approved.

The freeze is causing extreme disruption to the states. Five months of the fiscal year have already passed. By the time states find out whether or not they will receive their FY 86 funds, another month or two will have passed. When states actually receive their funds, assuming the rescission request is not approved, it will be too late for many projects, which are already cutting back or eliminating programs. The freeze has also affected the planning and funding processes by delaying planned activities and the start of planned projects. This freeze and rescission request happened so suddenly and so unexpectedly, there was no opportunity for state and local governments or private funding sources to assist in or assume funding for these projects. In light of Gramm-Rudman, states will not have the capability to assume the costs of these programs.

In Alabama, most of the projects funded by JJDP funds are laying people off, cutting back services and borrowing money to continue operation at a reduced level. If Alabama does not receive its funds, or assurance that it will receive its funds, by the middle of this month, all of its JJDP programs, which serve over 6000 youth, will end. Among those programs are 27 residential facilities, serving 368 juveniles. If these facilities close, the juveniles will either be "turned loose" or placed in detention facilities or adult jails. There are no other facilities available. To think that the state will be able to assume the additional costs of these programs is ludicrous. Alabama estimates it will lose $56 million in Federal funds with the first round of Gramm-Rudman. Without the alternatives to institutions, status offenders could, once again, be placed in jails because there is no other place for them. Removing juveniles from jails will become impossible.

Virginia will lose 15 programs June 30th if its FY 86 money is not received. All its programs will end by September if no more JJDP funds are received. Virginia has passed enabling legislation to require the removal of juveniles from jails but has not appropriated the money to implement the legislation. Instead, the state was relying on the FY 86 and FY 87 JJDP funds to demonstrate that community-based alternatives to jails will work. The state would then begin to assume the costs of these programs on a phased-in basis. If the alternatives cannot be provided, the legislation may be rescinded. In order to begin these programs as planned, Virginia needs to know now, if the money will be available. The development of community-based programs takes a great deal of time, effort, cooperation and coordination by many people and agencies. The groundwork can take years. If, when all the pieces are finally in place, the funds which were promised are no longer available, the entire process will collapse. Without the FY 86 funds, states will be unable to fulfill their commitments.

In Massachusetts, four projects ran out of funds at the end of December. Of these four projects, two are no longer operating, one has received a loan from Community Chest to carry it for a few months, and one is operating at a greatly-reduced level by borrowing funds from other programs. Four projects ended February 28, and four will end March 31st. These projects include family-network projects, school projects and substance abuse prevention/projects, and they serve thousands of young people. One of these projects alone affects 4000 youth. All but one of Massachusetts' 21 projects will end by June 30. There is no state money available to continue these projects. Massachusetts also needs its administrative money no later than May 3, in order to continue the juvenile justice staff necessary to manage the JJDP funds. If the staff were to take the vacation time owed them, their funds would be depleted now.

In the State of Washington, all 13 JJDP-funded projects reached the end of their current contracts February 28. These projects, which include substance abuse prevention, prevention and treatment of sexual abuse, foster care services and training and high-risk offenders, serve about 5,900 youth and provide training to 250 professionals and volunteers. By using every available source of funds, it is possible to continue these projects until April 30th. After April 30th, there will be no money. Washington needs its money, in hand, not on paper, by April 30th, if these projects are to be continued. One of these projects, begun last year, treats sexually-abused boys. If the money is not received by April 30th, staff will be terminated and services discontinued. Parents and children will be notified that treatment will cease. It will not be possible to refer the children and families to another program. There isn't one. This project has been unable to obtain an emergency loan, and it is too new to have had any opportunity to acquire funding from other sources. New projects, approved for funding to begin operations March 1, will obviously not begin.

Kentucky is in a similar situation. Funds were found to continue 11 projects, which would have ended March 31, for a few more months. However, on June 30, 26 projects will end; on August 31, one project will end; on September 30, 27 projects will end; on December 31, six projects will end; on January 31, 1987, one project will end. There are no funds available to continue these projects.

If Maine does not receive its FY 86 funds, all of its projects, including its pilot jail removal projects, will end. Two of the three staff positions, which support the State Advisory Group, would be eliminated. There are no other funds available to continue these projects at this time. Arkansas has ten jail removal projects ready to begin, as do a number of other states. Many states have flatly stated that the freeze on funds has made it impossible for them to meet the deadline for removal of juveniles from jails. Other states have said that, without the FY 86 funds, the jail removal initiative in their states will slow down or completely end. Most of the projects in all the states will end if the FY 86 money is not received.

In order to receive JJDP funds, states must develop a three-year comprehensive plan. These plans include goals, priorities and implementation strategies. Programs are funded on the basis of these state plans, and grants are often awarded for 18-month to three-year periods, since it usually takes at least that long for a program to prove its effectiveness and find other sources of funding. Even grants awarded for one year are often awarded with the understanding that continuation funding will be necessary and will be available. Without such assurances, programs would never be developed, because it is impossible to prove their worth and obtain continuation funding within a year. JJDP-funded programs have a high percentage of being continued by state, local and/or private sources of funds. Obtaining other sources of funding takes time. With this freeze and rescission request, there has been no time.

State Advisory Groups often make agreements with other State agencies or private providers of services to share the costs of beginning new programs, with state and local agencies gradually assuming complete costs. These agreements are not quickly negotiated nor are they quickly fulfilled. Most states are currently implementing the second year of their plans and are, therefore, in the middle of many activities. Agreements were made in good faith. If they are not fulfilled, the likelihood of future agreements is slim.

Implementation of the Act requires systems changes on many levels. Such change, if it occurs, come slowly, and it can take a number of years. For example, Pennsylvania has been trying for a number of years to establish a state-wide management information system. The State Advisory Group funded a demonstration project in one county, which has proved to be very effective. Other counties, under pressure to automate, are interested in using the same system so that all computers and software are compatible. Even the city of Philadelphia, which had previously been reluctant to become involved, has evidenced an interest in being part of a statewide information system. The FY 86 funds were to be used to assist in the effort to make all information systems compatible. Without some resources and a coordinated effort, possible through the use of JJDP funds, each county may develop its own system, which might not be compatible with the systems of other counties. Pennsylvania has other regional and statewide programs ready to begin, which will not be funded without JJDP funds.

In order to ensure the most effective use of Federal funds, states have developed careful grants award and review procedures. Many states request proposals to provide specific services. Several states, among them Tennessee, Vermont, Georgia and New Jersey, have delayed requesting proposals because of the uncertainty of FY 86 funds. These delays will result in comparable delays in actually awarding funds and beginning planned programs. Deadlines, including those mandated by the Act, will be difficult, if not impossible, to meet.

Some people in the Administration have stated that the states will continue their effort in regard to the Act and the funding of programs and that no further contribution from the Federal Government is needed. This statement is not true. The examples above from a sampling of states make it clear that states simply do not have the resources to continue these programs at this time. Chances are that existing state-funded programs will be reduced or eliminated because of Gramm-Rudman. Without the resources of the Federal Government, small though they may be, the entire JJDP effort is jeopardized.

Some people in the Administration say that the goals and the mandates of the Act have been achieved, and, therefore, the Act is no longer necessary. This statement is also not true. While progress has most definitely been made, the goals and mandates of the Act have not been met.

Participation in the Act is voluntary, and the 52 states and territories, which currently participate in the Act, have made a commitment to meet the mandates of the Act. There are 43 states and territories in compliance with the deinstitutionalization mandate of the Act. More information is needed from five states to determine if they are in compliance. Two states have been found not in full compliance, and one state is not in substantial compliance. One state must demonstrate progress, which it has done. There are 33 states in compliance with the mandate to separate juveniles from adults. Ten states are making progress, and more information is required to make a determination on six other states. One state is making progress but must demonstrate compliance, and two states are making no progress. Data on the jail removal mandate are not yet available, since states will not begin to report this information until their 1986 monitoring reports.

It is important to point out that these figures are based on the monitoring reports from the states, which, under OJJDP regulations, allow for certain exceptions. The allowable exceptions—juveniles held in jails under six hours, status offenders held under 24 hours, juveniles held outside a Standard Metropolitan Statistical Area—are not counted for purposes of monitoring reports. Even if all states were found to be in compliance with all the mandates, it does not necessarily mean the intent of the Act would be fully met. The above information indicates that we still have much to accomplish. There are still status offenders being held in jails and institutions. There are still some 240,000 juveniles detained in our jails every year, and many of those are not separated from adults. We cannot stop our efforts now.

The Act is broader than its mandates. It also includes prevention, specific activities and programs, coordination of juvenile justice efforts at all levels of government, improvements in the juvenile justice system itself. These efforts are ongoing. Change does not come easily or quickly to bureaucracies or systems. It takes a long time to establish credibility with the number of entities involved in and with the juvenile justice system and to institutionalize new approaches. Until such time as juvenile delinquency is no longer a problem, the Act will be needed. Only with the concerted efforts of Federal, state and local governments and only by working with juveniles to prevent them from entering the adult criminal justice system or, even better, the juvenile justice system, will we ever make an impact on crime in this country. The Juvenile Justice and Delinquency Prevention Act remains our most effective mechanism for reducing juvenile delinquency and improving the quality of justice for juveniles.

Testimony of Harwin E. Wolfgang

Widespread agreement exists that the only method appropriate for the determination of delinquent and criminal career parameters such as: age at onset of criminal behavior, behavioral antecedents of criminal behavior, the seriousness of a developing criminal career, the effects of various interventions on subsequent criminal and delinquent behavior, early behavior and delinquency as they relate to adult criminality, the timing of intervention especially as related to the aging process and its effects on criminality, early childhood and youthful experiences and their relationships to delinquency and criminality, the prediction of subsequent criminal activity from prior behavior and so on, is to pursue these criminal policy and intellectually relevant concerns by means of long-term longitudinal studies.

Regardless of the method, attempts to supply this kind of knowledge from less expensive and time-consuming techniques (simple cross-sectional analyses of synthesized cohorts generated by cross-sectional designs) have been inadequate. Authentic longitudinal birth cohort studies have been shown to produce the only truly valid behavioral links over time that permit causal statements relevant to policy decision-makers to be made for the development of strategies for the prevention and control of delinquent and criminal behavior.

This work has been primarily and first undertaken in the United States at the Sellin Center. In addition, and just as important, this work has been supported exclusively by OJJDP. Owing to the foresight and sustained interest of OJJDP this valid criminal justice resource has been and continues to be developed. However, the work is far from completed, specifically with regard to the 1958 Birth Cohort Study and, in general, with regard to the causes and prevention of juvenile delinquency. Crime continues to be a major problem for our society. In fact, in a recent survey of corporate executives undertaken in Philadelphia, over 60 percent cited crime as the major factor in determining the location of their corporate headquarters and work places.

The 1958 Birth Cohort Study, with its yet to be accomplished field work interview survey, is the only study of its type and magnitude now under way in the United States. Funding loss for this project would bring to an end not only this crucial field work on crime causation, intervention effectiveness, childhood experience and delinquency and self-report criminal violations; it would also bring to a halt the extensive analyses yet to be performed on the existing data base gathered on the 30,000 members of the 1958 cohort.

In short, just as we are approaching the completion of the largest and potentially most useful attempt ever undertaken to resolve many of the issues mentioned above, the last and smallest proportion of the funding now under debate would, if withheld, result in the complete shutdown of the project and the loss of its most valuable products.

The effect of this funding loss, even for a short period of time, would be devastating. Trained personnel would have to leave the project; the contract with the interviewing agency would be violated and start-up, if attempted at a later date, would be difficult because of the loss in data continuity which would occur—police files are routinely destroyed, addresses change and qualified personnel have to be located and trained. Essentially, the long-term cost would far outstrip the short-term gain realized by eliminating this project.

In conclusion, the loss of OJJDP funds would have a far-reaching effect for this project in all of the areas we have discussed above: crime causation, crime prevention and control, both in the scholarly and policy-relevant areas. This research at the Sellin Center would end, as well as one of the country's major attempts to address the major social and economic problems, those of the prevention and control of criminal violence and property loss.

Testimony Before the United States Senate Submitted by Donald W. Mathis

Good morning, Mr. Chairman, and I thank you for this opportunity to testify before the Subcommittee on Juvenile Justice on the need to maintain and strengthen the federal role in services to our nation's troubled youth and families. I especially want to commend you, Senator Specter, for your exemplary leadership in chairing this Subcommittee and for your diligence in protecting America's youth, families, and communities. Indeed, all of the distinguished Members of this Subcommittee have provided many years of outstanding work with juvenile justice and delinquency prevention legislation, policy, and oversight.

I am Donald W. Mathis, acting project coordinator of the Centinela Valley Juvenile Diversion Project in Los Angeles County, California. This project is administered by the City of Inglewood Police Department. Prior to my current position, I was the associate director of the National Network of Runaway and Youth Services in Washington, D.C. From 1984 through this past January, I served as co-chair of the Ad Hoc Coalition for Juvenile Justice and Delinquency Prevention. My testimony in support of the success and continuation of the Juvenile Justice and Delinquency Prevention Act (JJDPA), Mr. Chairman, reflects my 15 years experience as a community volunteer, project administrator, and program advocate for services to children, youth, and their families.

Mr. Chairman, my testimony in support of the JJDPA focuses on the following three major facts:

JJDPA funds and legislative priorities *directly* help troubled youth and their families, law enforcement systems, and units of government in California and in states and communities across America.

The federal investment of Office of Juvenile Justice and Delinquency Prevention (OJJDP) formula grant funds to states is cost-effective in both the short and long term. The modest investment of $70.2 million for the overall JJDPA leverages many millions of other public and private funds and resources to address the problems of juvenile delinquency and youth crime.

The Reagan Administration's arguments for defunding and dismantling OJJDP are specious and dissolve under careful scrutiny. In fact, most state and local OJJDP funded projects embrace and adhere to many of the public policy themes offered by this Administration.

JJDA FUNDS WORK WELL IN HELPING YOUTH, FAMILIES, AND COMMUNITIES

Everyday, Mr. Chairman, I see the positive effects of OJJDP funds in the community where I work, the heavily-populated Centinela Valley area of Los Angeles County. Parenthetically, in previous jobs I have had, I also have seen firsthand the value of these funds with the Alabama Department of Corrections facility in Mt. Miegs (AL), the Lexington Fayette Division of Children's Services (KY), Cincinnati's New Life Youth Services program, and the Youth Resources Center in Hyattsville (MD).

The Centinela Valley Juvenile Diversion Project (CVJDP) receives $22,559 of OJJDP formula grant money which is administered by the California Office of Criminal Justice Planning. Last year these funds provided psychological counseling, parent training, truancy abatement, remedial education, and other much-needed services to more than 100 troubled youth and their families who had been referred to the project by juvenile court, probation, police departments, the schools, and other social service agencies.

CVJDP's goal is to prevent delinquency by providing youth with skills and opportunities to make positive contributions to their community, and by providing our communities with alternatives to processing early offenders through the criminal justice system. Last year, we provided services to 358 youth and were able to obtain service for another 713 youth and families at no cost to the project.

Juvenile delinquency and crime are severe problems in the Centinela Valley, which includes the cities of Inglewood, Lawndale, Hawthorne, Gardena, and Lennox. Of the 358 youth served by CVJDP last year, 224 (62 percent) had arrest records for 187 felonies and 126 misdemeanors. The police departments in the respective cities have identified at least 38 youth gangs that engage in crime.

A substantial number of these youth come from poor and/or single parent families. 30 percent have no working parent. A majority of the youth (57 percent) come from homes where there is a single parent or no parent. Only 15 (4.1 percent) of the youth we served came from families having any applicable insurance to pay for the kinds of mental health/counselling services needed either by the youth or their family. Few of these covered the full cost of service.

Mr. Chairman, this past summer I had the privilege of doing a workshop before the California Peace Officers Association. At that time, I learned that the cost of constructing and maintaining one secure detention cell for one year in California was $90,000. For $90,000, CVJDP ,could serve well over 300 youth.

Although OJJDP funds constitute only 16% of CVJDP's annual budget, these funds are absolutely essential to the continuation of my program, and indeed, to more than 90 municipal and community-based agencies throughout California. Historically and at present, OJJDP formula grant funds continue to leverage other public and private funds for juvenile justice and delinquency prevention services. For example, under California's "County Justice Subvention Program" (Assembly Bill 90), CVJDP receives $92,448 in state funds. This state progam was specifically established to augment funds and support the mandates of the federal Juvenile Justice and Delinquency Prevention Act.

OJJDP funds also help leverage private dollars for CVJDP, ranging from the United Way to the Hollywood Park Racing Charities to the local Kiwanis and Optomists Clubs respectively. My experience has proven to me that the private sector will contribute to juvenile justice and delinquency prevention programs if and only if the private sector knows that they are partners and not the sole support of programs.

For this reason, Mr. Chairman, I continue to be dismayed at the Administration's repeated attempts to defund, freeze funds, rescind, zero budget, and generally do everything that it can to undermine the effectiveness of the JJDPA. Your leadership, Mr. Chairman, along with the strong and consistent bipartisan support in both the Senate and House, have resulted in the preservation of the JJDPA and its funds. This Administration should immediately give up its vendetta against the juvenile justice program and support the efforts of states, cities, municipalities, and families to help their troubled youth.

OJJDP-FUNDED PROGRAMS ARE SHORT TERM AND LONG TERM COST-EFFECTIVE

While I have offered some implicit arguments earlier in my testimony to support the above statement, additional measurable evidence is available. With regard to the CVJDP, 157 (70%) of the youth served last year were not rearrested. Moreover, Mr. Chairman, I would be pleased to provide this Subcommittee with many pounds of client (youth and parent) satisfaction reports which show how our progam has reduced school violence, promoted family stability, and given these high-risk youth some personal skills that they can use to promote their own self-sufficiency and lead law-abiding lives.

Other California OJJDP grantees have achieved noteworthy and measurable successes. Specifically,

The Youthful Offender Treatment Project in Sacramento has helped alleviate the serious overcrowding in a California juvenile hall (secure detention facility) and through its residential and employment services, the program has found jobs for 65 percent of its paroled youth. Other state programs average only 30 percent employment for such youth.

The Dispositional Alternative Project in San Diego provides an alternative to costly probation and juvenile court services and also saves federal, state, and county government funds by reducing secure detention and out-of-home placement costs. The recidivism rate of youth served by this project is well below the state average.

The recently started Industry Network Project, conducted by the California Youth Authority, is working cooperatively with the Industry Education Council of California and an advisory committee of leading business representatives to capture training and job slots for delinquent and adjudicated youth.

Mr. Chairman, the 93 California projects that receive OJJDP funds demonstrate one of the major strengths of this federal assistance. Namely, OJJDP funds support the innovative and state-of-the-art service, treatment, and research projects, which in turn, states, municipalities, and the private sector can then adapt to improve the overall juvenile justice services systems in their respective locales. For example, in his 1986-1987 budget, Governor Deukmejian announced a $750,000 gang suppression initiative to be carried out by community-based organizations. It was prior and current year OJJDP funding that lead the Governor to include this line item.

In summarizing these arguments, Mr. Chairman, let me refer to two recent national reports, "Reconnecting Youth" by the Education Commission of the States and "All One System" by the Institute for Educational Leadership. The following quotation from "Reconnecting Youth" captures the dramatic impact of a problem that is most familiar to the police, courts, and youth service providers.

In 1978, young adults constituted 23 percent of the U.S. population. By 1995, they will constitute only 16 percent, shrinking by one quarter the size of the entry-level labor pool. Within that shrinking labor pool is a growing pool of "at-risk" young men and women: people in their teens and early twenties who could become productive citizens but most likely will not unless something out of the ordinary happens. They have the intelligence to succeed, but they lack important skills, family support, discipline and the motivation to make it. An unconscionably number of them are poor, Black and Hispanic youth.

The economic impact of the above is examined in "All One System", for example, back in 1950, when Americans retired on Social Security, there were 17 people in the work force contributing to each person's pension. But in 1992, there will be only 3 working-age people to pay for each retiree's benefits, and one of those will be Black or Hispanic. And unless we do a better job preparing our children to be productive members of society, the chances are that 1 of the 3 will be receiving some form of public assistance.

Mr. Chairman, I am not naive enough to suggest that the $70.2 million of OJJDP funding is going to magically reverse these most serious trends. But as you well know from your outstanding work as District Attorney for the City of Philadelphia, these two reports are referring to many of the same (but not all) of the youth who enter the juvenile justice system. The simple fact is that economically, our nation cannot afford to waste or turn our backs on any single young person in this country, be those youth delinquent or not. Continued, "unfrozen" funding for the JJDPA is one proven way of rectifying this disaster which may well undermine our entire nation.

THE ADMINISTRATION'S ARGUMENTS FOR DEFUNDING OJJDP REFLECT POOR LEADERSHIP AND POOR PUBLIC POLICY

Mr. Chairman, I must commend the creativity of this Administration in its construction of arguments as to why OJJDP should be defunded, and thereby in fact, dissolved. Early during the JJDPA reauthorization efforts in 1984, the Administration trotted out the line that the program should be killed because it didn't work, i.e. the Act's goals of deinstitutionalization of status offenders and separating juveniles from adults in jails were "soft" notions. The concept of "delinquency prevention" was challenged by the Administration to the point of ridicule.

More recent pronouncements by the Administration show a complete 180 degree shift. Now the program should be abolished because it has succeeded and met its goals. The problems, furthermore, which the JJDPA addresses, are state and local problems and therefore the funds to resolve those problems should be state and local and any other non-federal funds.

Mr. Chairman, let me begin my closing defense of the OJJDP program by readily acknowledging that I am aware that the program is not perfect. Nor do I disagree with every program priority that the Administrator Al Regnery has begun and implemented. But it seems patently clear that this program should be maintained and, if anything, the funding level should be substantially increased, especially the formula grants provisions.

It simply is not enough for President Reagan to commend public/private partnerships and challenge the youth of America to fully participate in our society without providing the necessary funds to implement these visions. OJJDP projects help youth meet these challenges and promote exactly the kind, of public/private partnerships which the President supports. For this, OJJDP should be maintained and strengthened, not dismantled and undermined.

I thank you for this opportunity to testify and respectfully ask that you and the Members of the Subcommittee maintain your strong oversight of OJJDP. The youth served by the Centinela Valley Juvenile Diversion Project are the immediate winners, and in the end, our whole nation benefits.

TESTIMONY OF DEAN DIXON, EXECUTIVE DIRECTOR OF MID-ATLANTIC ASSOCIATION OF YOUTH SERVICES BEFORE THE U.S. SENATE JUDICIARY SUBCOMMITTEE ON JUVENILE JUSTICE

As Executive Director of the Mid-Atlantic Association of Youth Services, I believe the proposed rescission of all FY 86 Office of Juvenile Justice and Delinquency Prevention funds (OJJDP) would impose a hardship on existing and proposed juvenile justice programs across five Mid-Atlantic states and the District of Columbia. MAAYS is funded through a coordinated networking grant by the Department of Health and Human Services to aid runaway and homeless youth and their families in Pennsylvania, Virginia, West Virginia, Delaware, Maryland, and the District of Columbia. Allocations for the Region based on formula grants is as follows:

Delaware	$225,000
Maryland	704,000
Pennsylvania	1,888,000
Virginia	926,000
West Virginia	344,000
District of Columbia	225,000
Total	4,312,000

Ruth Williams, Program Manager of the Pennsylvania Commission on Crime and Delinquency states that Pennsylvania has spent OJJDP funding on post-adjudication programs mostly dealing with the serious and violent offender. "If this funding capability is eliminated," she said, "the PCCD cannot maintain credible technical assistance to juvenile court programs throughout the Commonwealth."

In Philadelphia, she noted, the Juvenile Court Judges Commission, the PCCD and groups representing the Philadelphia Juvenile Courts were asking funding for improvement in the Philadelphia Juvenile Court MIS. Because the hardware and software used by the city was not compatible with that used by the state, incomplete data was being received by both parties. Philadelphia was planning to reautomate, purchase new hardware, and hire a programmer. Ms. Williams states that this plan is now in jeopardy due to the proposed rescission of FY 86 OJJDP funding. In past years, the Commonwealth had funded a system improvement in the Dauphin County Juvenile Court MIS through OJJDP funds. FY 86 funds were to be used to replace this in 10-15 other counties in the state. Similarly, plans to replicate a comprehensive MIS effort in Northumberland County dealing with Children and Youth are in jeopardy because OJJDP funds were earmarked for this in FY 86.

The National Center for State Courts funded a two-year study of the Philadelphia Juvenile Justice System with the Commonwealth following up with a report that included 70 recommendations. FY 86 funds were to be used to implement a number of changes recommended by the center.

In the area of prevention, the Commonwealth's emphasis has been on family prevention. Once a youth is in the system, the prevention program involves family counseling and an innovative truancy reduction program. In Philadelphia, CORA Services has initiated such a program. All residential community-based programs must have an aftercare component, and family-based programs; and OJJDP FY 86 funds were to be used to continue and replicate such programs. The North Central Secure Treatment Program in Danville deals with the serious, violent, habitual offender. Youth are placed in treatment phases outside of the secure treatment unit into a neighboring building. Their families are on site and this component, as a forerunner to after care, places a heavy emphasis on family counseling and family acting-out. Continuation and replication is jeopardized by discontinued/rescinded FY 86 funds.

Philadelphia Juvenile Court Judges have sought 30 after care and probation workers for FY 86 to be funded through a continuation of FY 84 and 85 OJJDP Funds. This reflects the Commonwealth's emphasis on aftercare and intensive probation. In all likelihood, such positions would not be created were funds to be discontinued.

In Virginia, James Roberts of the Commonwealth's Bureau of Corrections Services, states that Virginia intended to fund 28 projects serving a variety of youth with FY 86 funds. Without these funds being reintroduced, projects scheduled to begin July 1st would be funded until September 30th with existing funds, then all would close down October 1st.

Ron Collier, a Criminal Justice Analyst with the Bureau, states that twice his office requested OJJDP respond on the status of FY 86 plans and "received no answer." This has "devastated our planning process," he said, "without knowing how much we have to allocate, it has completely destroyed our process." He went on to explain that their review process begins in February, with the advisory board reviewing proposals in March, and the Governing Board reaching final decision in early May. There is then only one month to administer the award process.

There are 13 continuation programs affected, he said, and the missing link is the time calendar.

Maryland is an outstanding example of how the intent of the program has NOT been met through deinstitutionalization. In Maryland, OJJDP funds are allocated to the Juvenile Justice Advisory Council, who in turn allocates them to community-based programs that exist to deinstitutionalize youth. According to Kris Mayne, Executive Director of Youth Resources Center in Hyattsville and Secretary of the Maryland Association of Facilities for Youth, the state mandated a managerial study conducted by an independent consultant. Reporting to the Department of Health and Mental Hygiene, it expressed a strong disapproval of two facilities: the Charles Hickey School, an institution for serious offenders 16 years and older; and the Montrose School for boys and girls. The study said these schools, located in Baltimore County, were seriously overcrowded, that Montrose should be closed, and Hickey reduced in size from 400 to 300. The study strongly recommended more money be placed into community programs that exist to help these offenders outside an institution. Ms. Mayne notes that if the OJJDP funding allocated to Youth Resources through JJAC is rescinded, her program would "close or be seriously affected." Obviously, not only has deinstitutionalization failed to take place, but the agencies empowered to deinstitutionalize WILL be seriously affected.

As Ms. Williams pointed out, elimination of funding capability means the states cannot maintain credibility. This is even more important at the local level. Federal funding through OJJDP shows that others care, and enables programs to solicit matching funds, and develop grants and gifts from the United Way and foundations both corporate and private. So the situation that could exist is one of double-jeopardy, where the elimination of Federal Dollars means you lose the other funding as well.

This continued freeze of FY 86 OJJDP funds will mean the closing down of some programs, and elimination of essential and expanded services in others that were planned. The Office of Management and Budget is wrong when they state that termination will have negligible impact on the criminal justice program. There HAS been program disruption and numerous programs WILL cease to exist. Extremely important studies on juvenile delinquency and pilot programs such as those in Pennsylvania, will be halted.

As Executive Director of the Mid Atlantic Association of Youth services, I join you in your deep concern that Congress' express intent be carried out and that all remaining funding appropriated for Juvenile Justice and Delinquency Prevention be made available for obligation in FY 86.

Mr. SPECTER. Mr. President, I ask unanimous consent also that the full statement of Administrator Regnery be printed in the RECORD so that his position may be before our colleagues as well.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT OF ALFRED S. REGNERY, ADMINISTRATOR, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION

Thank you, Mr. Chairman, for inviting me to testify this morning on the activities of the Office of Juvenile Justice and Delinquency Prevention.

I know that uppermost in the minds of the Subcommittee Members is the situation involving the future of my Office. As you are aware, Mr. Chairman, the President, as he has done each year since taking office, has requested no funding for OJJDP for the next Fiscal Year. In addition, the President's budget request for FY 1987 also contains a request for a rescission of almost all of the FY 1986 funds appropriated for OJJDP.

While you, Mr. Chairman, and other Members of Congress have expressed your dismay to the President, to the Attorney General, and to me over this seeming lack of concern for the welfare of those served by OJJDP, I would like to take this opportunity to point out that the President must be concerned with the welfare of all Americans.

Over and over again, in opinion poll after opinion polls the American people have cited the Federal deficit as the biggest problem faced by the Nation. They know that the Federal government cannot keep spending money it does not have. Congress, in passing the Balanced Budget and Emergency Deficit Control Act last year, recognized that severe measures must be undertaken to control runaway spending before the dramatic improvement in the Nation's economy experienced under this Administration is irreparably reversed.

The program of spending cuts and other reforms contained in the President's FY 87 budget would lead to a balanced budget at the end of five years and would thus remove a serious impediment to the continuation of the country's economic expansion.

In crafting his budget, the President had the responsibility of ensuring that those programs that can only be carried out by the Federal government—those for the Nation's defense, for the protection of the poor and the elderly, or for the enforcement of Federal laws, for example—were adequately funded. Other programs, particularly those that have accomplished their original purpose, that could be better operated by state and local governments, or that could be supported by the private sector, can no longer be supported with Federal funds.

This Administration believes that the programs of the Office of Juvenile Justice and Delinquency Prevention fall into this latter category.

In 1984, when the Federal deficit was $185 billion, the country's state and local governments enjoyed a combined surplus of approximately $50 billion. Why should the Federal government, which is operating under a huge deficit, pay for programs that benefit state governments, when those same government are oprating under budget surpluses? Why should the Federal government continuing borrowing money to pay for programs the states could support with their own funds?

As you know, Mr. Chairman, through the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, Congress gave OJJDP a mandate to assist the states in three specific areas: deinstitutionalizing status offenders (those juveniles whose offenses would not be offenses were they adults), diverting them from the judicial system and out of secure detention facilities and into community-based, non-judicial settings; separating delinquent juveniles from institutions in which they have regular contact with adults; and removing juveniles from adult jails or lockups.

A survey by my office, however, found that the states use only a small portion of OJJDP funds in support of the jail removal and deinstitutionalization mandates. In FY 85, states spent only 23 percent—roughly $9.3 million—for preadjudicatory alternatives in support of jail removal and the deinstitutionalization of status offenders. The largest percentage of funds—27 percent or $10.8 million—is spent on treatment and rehabilitation programs. Another 23 percent ($9.1 million) is spent on prevention programs, 20 percent ($7.8 million) is spent on system improvement programs, training, for example; and 2.5 percent ($960,000) is spent on advocacy programs. Thus, states are using Federal funds to finance programs they would support, and do, in fact, support, regardless of Federal assistance.

Although many of these are worthwhile programs, that does not mean that the Federal government should continue to provide funds for them. As President Reagan has so aptly pointed out, we can no longer afford every good program.

Meanwhile, states continue to move toward compliance with the mandates of the Act. As of the end of 1985, 43 states and territories have met the requirements of the Act by demonstrating substantial or full compliance with the deinstitutionalization mandate. As a result, juvenile status offenders are now only rarely held in secure detention facilities. Thirty-three states have complied with the requirements for the separation of adults and juveniles in adult jails and lockups, and 20 states have enacted legislation in support of the jail removal mandate. I have attached to my testimony the latest summary of states' compliance with the mandates of the Act. The summary contains data from the states' 1984 monitoring reports.

I am convinced that the states that now participate in the OJJDP program will continue their commitment to the deinstitutionalization, separation, and removal mandates even without the relatively small amount of Federal funding provided for these purposes. In fact, since the funds OJJDP provides to states are insufficient to cover the full cost of deinstitutionalization, separation, and removal, states participating in the program already have shown their commitment to the goals of the Act and to a large extent have supported compliance with state and local funds.

And inasmuch as it is the states who are paying most of the cost of the Act's mandates, it should be the states that decide how best to comply with them. Thomas Jefferson once warned, "Were we directed from Washington when to sow and when to reap, we should soon want for bread." And President Reagan has said time and again that we must recognize the constitutional principles of Federalism so that we can limit Federal intrusion and cumbersome Federal regulation regarding states and local matters.

There is no reason to believe that, in the absence of Federal support, states will now retreat from a commitment in which they themselves already have so heavy an investment, both financially and philosphically. Rather, following 11 years of Federal assistance, states and localities would now take over full support of what clearly is solely a state and local responsibility.

In the same way, other programs proven successful that have been supported using OJJDP funds would continue with states, local, or private funds. Federal grant money never was intended to be the continued sole support of new programs. For this reason, most projects are supported only for a period of three years. After that time, projects that have proven successful or worthwile to a community are expected to become self-supporting or to be supported through state, local, or private funds.

OJJDP also has supported, through its National Institute for Juvenille Justice and Delinquency Prevention, a relatively small number of research projects. While this Administration supports the role of the Federal government in research, a separate unit subsidizing research on juvenille justice is not needed. Research in juvenille justice comprises only a small part of research on crime and justice. The National Institute of Justice serves as the research arm of the Department of Justice, and the Administration has pledged to continue support for this agency, which already conducts a number of research projects relating to juveniles.

MISSING CHILDREN

During the more than three years of my administration of the Office, we have supported many worthwhile programs. Perhaps the most gratifying to me is the success of our Missing Children's Program.

I would like to clarify some of the confusion about funding for this program. The Missing Children's Program was authorized by the Missing Children's Assistance Act of 1984 and has an appropriation separate form that of OJJDP. The Administration requested and Congress has appropriated $4 million for the program in FY 86. No rescission of these funds has been requested.

In addition, the President has expressed his continuing support for efforts to recover missing children and prevent the abduction and exploitation of children by requesting $4 million for the program for FY 87. I think you will agree, Mr. Chairman, that this is evidence of the Administration's continuing concern for the welfare of these endangered children in appropriating these funds in what otherwise is a very lean domestic budget.

By passing the Missing Children's Assistance Act, Congress recognized the need to coordinate resources, develop, standardize, and disseminate effective policies and procedures regarding missing children across all jurisdictions, and provide a central focus for research, data collection, policy development, and information about missing children.

As required by the Act, a Missing Children's Advisory Board was appointed in January 1985 and met four times during the year. The Advisory Board advises the Attorney General and OJJDP on coordinating missing children's programs and activities and also provides advice in establishing funding priorities under the Missing Children's Program.

The Board also has prepared a comprehensive report on missing children that it plans to submit to the President, the Attorney General, and the Congress the day after tomorrow.

The report makes recommendations on the steps that should be taken to reduce the problem of abducted, abandoned, and runaway children and discusses the unintended consequences of deinstitutionalization on the problem. In addition, it addresses the question of the number of children actually missing, and clarified some of the issues that continue to surround that question.

In accordance with the Act and with the advice of the Advisory Board, OJJDP has established seven funding priorities for the Missing and Exploited Children's Program.

First, a National Incidence Study to Determine the Actual Numbers of Missing Children will provide a comprehensive, reliable assessment of the missing children problem. To plan for this study, OJJDP solicited the expertise of researchers from various fields who had designed, funded, or conducted studies with similarly complex problems. A panel of these researchers met last August to advise OJJDP on issues that should be considered in designing the study. Based on the advice of this panel, OJJDP is undertaking a number of initial pilot tests to determine the best approaches for a later series of larger studies that will provide reliable estimates of the incidence of missing children, information on the context of the events, and data on the characteristics of the victims.

The second priority is a National Study of Law Enforcement Agencies' Policies and Practices for Handling Missing Children and Homeless Youth. Applications for this study have been reviewed, and we plan to make an award within the near future. The study is designed to describe current law enforcement policies and practices and to identify the most effective law enforcement methods for handling reports and investigating, identifying, and recovering children who may be missing or homeless and at risk of exploitation. The study also will provide better estimates of the number of cases of missing children reported to law enforcement agencies annually.

Under the third priority, funding has been provided to the Federal Law Enforcement Training Center at Glynco, Georgia, for a training program on handling missing and exploited children. The program is intended to help Federal, state, and local law enforcement personnel gain a better understanding of the problem of missing and exploited children and improve their skills in handling related cases.

The fourth priority is research on the relationship between missing and abducted children and sexual exploitation; the psychological consequences of abduction and sexual exploitation; and the child victim as witness. Research strategies for these issues are being developed by OJJDP.

The fifth funding priority is a training and public awareness program for practitioners involved with missing and exploited children.

OJJDP and the National Center for Missing and Exploited Children are developing, under the sixth program priority, an assistance program that will make up to 20 small, one-time awards to states that have legislatively established, state operated clearinghouses that serve as central repositories of information on children believed to be missing in the state. These two-year awards are intended to encourage states to develop clearinghouses and operate uniform data collection systems. States selected to receive OJJDP funding will be responsible for compiling accurate and relevant statistics and collaborating with the National Center for Missing and Exploited Children and OJJDP-sponsored research initiatives.

The final priority is assistance to private voluntary organizations. A cooperative agreement has been made to provide training and technical assistance in organization and administrative management for private voluntary organizations involved with missing and exploited children.

Through this program, there will be training sessions at 16 sites around the country during the next two years, a national conference of missing children's agencies, the identification and selection of five exemplary programs as host sites for training and technical assistance, and development of guidelines for successful missing children agency operation. Through a subcontractural agreement, the Adam Walsh Child Resource Center in Fort Lauderdale, Florida, will provide approximately 25 percent of the training.

Organizations participating in the program will be invited to submit applications for modest assistance and funds to further enhance their capabilities. These grants will focus on unique or especially effective programs run by private organizations.

The OJJDP Missing and Exploited Children's Program also supports the National Center for Missing and Exploited Children, which was established with OJJDP funds. The National Center serves as a national resource center to assist parents, citizens groups, communities, law enforcement agencies, and government institutions in a coordinated national effort to ensure the safety and protection of children. The Center operates a national toll-free telephone hotline through which individuals can report information relating to the location of missing children or to request information about procedures for reuniting children with their legal guardians. Since beginning, the hotline has received more than 100,000 calls and the Center has assisted in the recovery of some 3,000 children.

NEW PROGRAMS

While the budget situation has necessitated holding in abeyance funds for most programs planned for support in FY 86, several important new programs were begun early in the fiscal year which I would like to discuss.

In November, a cooperative agreement was made with the National District Attorneys' Association's American Prosecutors Research Institute to establish a National Center for the Prosecution of Child Abuse. The Center will provide technical assistance, training, and clearinghouse services to improve local prosecutors' handling and treatment of child victims. The Center also will develop model legislation and conduct training for others involved in the prosecution and treatment of child physical and sexual abuse cases.

Another new project, the Private Sector Probation Program, is designed to demonstrate the feasibility of private sector involvement in the delivery of probation services currently being provided by the public sector. During my tenure as OJJDP Administrator, Mr. Chairman, I have been encouraged by the considerable interest of the private sector in providing services in many areas of the justice system. Private sector spending already far outweighs government expenditures for criminal justice services, and I believe that the private sector will relieve more and more of the burden from overwhelmed government agencies.

Faced with fiscal constraints, local policy makers have begun looking for new approaches and techniques to operate probation departments more cost-effectively.

Research studies indicate that referral to probation is the most common juvenile court sanction used. More than 80 percent of adjudicated offenders are placed on some form of probation. The provision of probation services consumes the largest share of state and county corectional dollars, and generally employs the greatest number of correctional professionals.

The Private Sector Probation Initiative would target local and state jurisdictions that are interested in contracting out either selected parts of their probation functions or the entire probation function to a private sector agency and provide assistance in developing such contracts with the private sector.

CONCLUSION

Although other programs were planned for implementation in FY 86, no further awards will be made until Congress makes a decision concerning the President's request for a rescisson of OJJDP funds. Of the $67.6 million appropriated for OJJDP in FY 1986 (not including the Missing Children's appropriation), $60,797,000 is proposed for rescission. An additional $1.9 million will be sequestered under the March deadline of the Balanced Budget Act.

While I believe the Office of Juvenile Justice and Delinquency Prevention could provide some valuable information to the criminal justice community about juvenile crime and delinquency through the programs I have outlined here today, the simple fact is that the Federal government cannot afford them.

Thank you, Mr. Chairman, I will be pleased to respond to any questions you or Members of the Subcommittee may have.

Mr. SPECTER. Mr. President, during the course of these hearings, I was joined by the distinguished Senator from Alabama, Senator DENTON, who stated his own view that the action taken by the Office of Juvenile Justice and Delinquency Prevention was wrongful, that these funds ought to be expended. Senator DENTON left Administrator Regnery with the question what was going to happen with the programs in the State of Alabama, after Senator DENTON enumerated a series of complaints and requests which he had received from people in his State on these very important pro-

Senator SIMON of Illinois raised similar questions. Senator MCCONNELL of Kentucky raised similar questions.

Mr. President, a resolution which this Senator has offered to disapprove this rescission request now has a total of 51 sponsors and cosponsors.

Mr. President, I consider it to be a matter of the utmost importance and shall confer later today with the majority leader to bring to the floor the resolution of disapproval of the action taken by the executive branch in requesting the rescission.

Mr. President, it is vital that the juvenile justice funding move forward, and that is especially true in the context of the history of the plain congressional mandate on this important subject.

In the fiscal year 1981 budget, the Office of Juvenile Justice and Delinquency Prevention was funded at $100 million. The administration proposed elimination of funding and this Senator, in his capacity as chairman of the Juvenile Justice Subcommittee, proposed restoration of $70 million for OJJDP on the proposition that there should be a moderate program carried forward to care for the juveniles and children of America. Each year the Congress has spoken in unequivocal terms directing that the program be maintained in the face of repeated efforts by the administration to eliminate the program totally.

That statement was made again as recently as December 18, 1985, when Senate Resolution 278 was introduced and passed by unanimous consent the following day. I do not have to elaborate, Mr. President, upon the difficulty of getting something through the Senate on December 19, 1985. If any Senator had objected, the matter would have been resolved at that point in the crowded calendar which confronts this body that late in the year. But the resolution disapproving the informal freeze was passed by unanimous consent, reflecting the conviction of this body that the programs for juvenile justice should be carried forward.

Mr. President, the juveniles and children of America do not have any political action committees. They do not have lobbyists to come to Washington. They are unable to speak about their vital interests. But there is a panoply of problems among juveniles which range from missing children, to children who have run away from their homes, to children who have been victims of pornography, to children who have taken on the fad of suicide, to children who are using drugs, and to children who are in the twilight zone between lives of crime and lives as constructive citizens.

When I was district attorney of Philadelphia, Mr. President, I saw a recurrent pattern where a child would be a truant at 7 or 8, a delinquent at 9 or 10, petit larceny at 11 or 12, burglary of vacant buildings at 13 or 14, robbery at 16 or 17, and robbery-murder at 19 or 20. And that is a pattern which this very modest program for juvenile justice seeks to prevent.

In the context where the Congress of the United States has spoken so frequently and so unequivocally, it is imperative that the executive branch follow the mandate and release the funds so that these programs for juvenile justice can go forward.

When this Senator questioned Mr. Regnery as to his understanding as to congressional intent on this subject and received from Mr. Regnery the statement that he did not know what Congress' intent was, that is an assertion which this body and this Congress simply cannot accept.

Therefore, I ask my colleagues to consider this issue, and I will ask the leadership to bring this resolution of disapproval forward at the earliest possible moment.

I thank the Chair and I yield the floor.

Senator SPECTER. I will not dwell on it at any length today except to say that after Congress passed a bill there were maneuvers by the executive branch for rescissions and deferrals, and as chairman of that subcommittee I brought the matter to the Senate floor and we enacted resolutions negating what the executive branch had done.

I corresponded with Attorney General Meese on the subject and I found it very unsatisfactory what had been done in that situation. Finally, after a long battle and after a lot of delays, where many juvenile agencies in this country were deprived of their funds, we finally got the money paid out.

But it was, I thought, a blatant misuse of executive power in the face of a clear-cut statute directing that moneys be paid for juvenile justice, and many juveniles in this country suffered as a result of that executive action.

Now, that brings us to the legislation which was enacted at the urging of this Senator in 1986 for fiscal year 1987. It is set forth in the appropriations bills and what it amounts to was funding for positions and a direction that there be a drug task force in the city of Philadelphia, for four additional U.S. attorneys, four additional Drug Enforcement Agency agents, four additional FBI agents, with two support staff for each agent, four additional agents from the Bureau of Alcohol, Tobacco and Firearms, at a total cost—and these figures were compiled by the Bureau of Alcohol, Tobacco and Firearms and the Department of Justice Office of Legislative Affairs—for a total cost of $1,931,118.

And I understand what you have said today and I will not press the point further now, but what I would like from you is an answer to two issues. Number one, if you are confirmed, what will you do specifically by way of responding to committee language?

And the second question I have is what will the Department do now by way of honoring the congressional direction for the creation of this drug task force for the city of Philadelphia.

Mr. CHRISTENSEN. I'll get you a response, Senator.

Senator SPECTER. All right, I would appreciate it very much.

The other comments that I would like to make at this time relate to action which has been taken by the Office of Management and Budget by Mr. Miller where there has been a tremendous amount of negotiations with the Appropriations Committee.

And I can tell you, Mr. Christensen, that the sentiments which I have expressed today are shared by many, many of my colleagues in the Senate and many, many of my colleagues in the House of Representatives.

And these issues cannot really be litigated in the courts. They have to be worked out between the article I officers, the Congress, and the article II officers, the executive branch.

Finally, this year on July 8, after a tremendous amount of negotiations, Office of Management and Budget Director Mr. Miller yielded and, although saying that the committee language was not legally obligatory, said that he wanted department heads to, as he put it, take into consideration the legislative history as expressed in the accompanying committee reports and to give greater weight. That was his way of really relenting on the continuing resolution for fiscal year 1988.

But it seems to me that as a Senator representing Pennsylvania who saw the problem coming in Philadelphia, and it didn't take a lot of clairvoyance or foresight, and having gotten the Congress to act on this important task force, that my duty is to press the issue and to press it hard.

We now have before this committee the confirmation of the ranking Justice Department officials who can make this policy, and that is why I am pressing the issue, first, as to your overall approach and, secondly, as to what will be done specifically by way of honoring this congressional direction.

Mr. CHRISTENSEN. I think I understand.

Senator SPECTER. Okay, I appreciate that very much.

I know Senator Kennedy is on his way back, so we will hold the hearings in recess for just a few moments.

[Recess.]

Senator KENNEDY. We will come to order.

Mr. Christensen, just before we had to go over to the vote, you know, I just pointed out my own reaction to your response to some of these other issues that have come up in the course of the hearing this morning, and I don't think there are many Americans who aren't conscious about what has been happening in that Justice Department over the period of these recent months.

You expressed some concern about making any comment upon the issues of criminality or ethical violations in the Department over a period of time, but you are quite prepared in response to questions to indicate that you find everything just going along swimmingly in the Justice Department.

As I mentioned just before the break, I find that really quite incredible, particularly against a background, as we understand it, in which at least one nominee for this position is believed to have turned it down because after conversations with Burns and Weld, he was not prepared to accept that responsibility. There was another nominee that, as I understand it, declined for other reasons.

But, you know, you took no steps to find out what was going on before you got there. In fact, it almost sounds like you made a point of not finding out why your predecessors and others left.

You know, you said earlier that you didn't make the inquiries because you thought you might have to rule on the matters, and that sounds to me like a reason to ask more questions, not fewer.

Again, why did you think it inadvisable to talk to the people who had the facts on matters which you might have to address, should you be confirmed as the Deputy?

Mr. CHRISTENSEN. I take it it is perhaps a question of when. I would——

Senator KENNEDY. Do you intend to talk to Burns and Weld, then?

Mr. CHRISTENSEN. Well, I don't know. That may be appropriate at some time.

Senator KENNEDY. What is inappropriate about it?

Mr. CHRISTENSEN. Now?

Senator KENNEDY. Sure. I mean, they have talked to the American people, they have talked to this committee. You are going into a job which one of them, who had a very distinguished career and had been selected by Mr. Meese himself, felt that he could no longer in good conscience serve, and another the same way, and they have spoken about these matters and you are going into that position.

It would just seem to me that it would be only natural that you would want to talk to them to find out whether you in good conscience could accept the responsibility or not, or whatever.

Mr. CHRISTENSEN. Well——

Senator KENNEDY. I just find it—just in response to these questions—difficult to understand your reasoning.

Mr. CHRISTENSEN. Senator, the reasons that Mr. Weld may have left does not seem to be something that would cause me not to want to do this job.

Senator KENNEDY. Well, you are not nominated for that; you are nominated for Mr. Burns' job.

Mr. CHRISTENSEN. I understand, but I thought we were talking about Mr. Weld. The reasons that they left really, to me, don't seem to bear on whether I should accept this responsibility, do this job, and that, I think, is, along with what I told you that I may be called upon to consider these in an official capacity——

Senator KENNEDY. What do you understand were the reasons that Mr. Burns left the job?

Mr. CHRISTENSEN. I really don't know.

Senator KENNEDY. Well, then how do you know that those reasons aren't sufficient?

Mr. CHRISTENSEN. Well, the reasons why he may have left the job do not seem to me to be reasons why I should not, having no——

Senator KENNEDY. Well, what were the reasons?

Mr. CHRISTENSEN [continuing]. Prior relationship or experience with this administration, why I should not be willing to come in and try to do the job of Deputy Attorney General.

Senator KENNEDY. Well, you just said that you didn't know the reasons that he left the job, but you are also telling us that the reasons he had left the job do not appear to be sufficient for you not to accept the job.

Senator HATCH. I think he is saying they were irrelevant.

Mr. CHRISTENSEN. Well, whatever reasons he had for leaving because of his relationship with Mr. Meese would not be applicable to me.

Senator KENNEDY. Well, you might find out that he didn't feel that it was his relationship with Mr. Meese. He sat at that table just a couple of days ago. He likes Mr. Meese and has respect for him. It wasn't the personal relationship. There were other issues to many Americans of enormous importance; to some Americans, of less, but nonetheless to an individual who had his trust and been selected by him and who had had a distinguished background, they were sufficient to bring him to the judgment that he could no longer serve in the Department.

You are not replacing somebody else; you are replacing him. It just would appear to me that he would certainly be one that you would have talked to, consulted with, and either resolved those issues in your own mind or not.

I would like to ask you, if you are confirmed and you run into a situation that both Mr. Burns and Mr. Weld were confronted with, would you give us assurance that at least you will come to the committee, the Judiciary Committee, if you feel perplexed by at least the workings of the Department or if things strike you in such a way that you feel it necessary to be able to at least take some action if you can't in good conscience, for whatever reason, serve?

Would you give us assurance that you would at least come and share your concerns with the members of this committee?

Mr. CHRISTENSEN. I really don't know, Senator, under what circumstances it would be appropriate for me to do so. If it were appropriate for me to do so, I would certainly want to work closely with this committee.

Senator KENNEDY. Let me ask you, on the question of the Office of Professional Responsibility investigation, to make sure your answer is clear, will you assure the committee that you will do everything in your power to assist the office in the prompt completion of its investigation?

Mr. CHRISTENSEN. I think that is a fair statement.

Senator KENNEDY. Well, do you have any hesitancy about saying yes?

Mr. CHRISTENSEN. No. I just wanted to make sure I understood it. I think they have a responsibility and I would hope that they discharge it, and I would not interfere with it. I would support them in doing that.

Senator KENNEDY. Can you assure us, if you are the acting Attorney General at the time of the completion of the report, that you will cause the report to be released to the public?

Mr. CHRISTENSEN. I don't think I can appropriately commit that. I'm not sure under what circumstances it would be appropriate to do that. If it were appropriate, I would expect to do what needed to be done under those circumstances. I think there may be other issues. I would want the advice of other divisions within the Department, but I can assure you I would act appropriately.

Senator KENNEDY. What would be the kinds of things that could be in the report that wouldn't be appropriate to release to the American public?

Mr. CHRISTENSEN. I'm not certain about that. I can see that perhaps reasoning or conclusions or that sort of thing as distinguished from action. I just really can't say.

Senator KENNEDY. Just two final areas. One, with regard to the Alta Club, as you know, it is a downtown social club and until October of 1987 the club's bylaws expressly excluded women from membership. Women for a time had to enter through a separate ladies' entrance which was later called the guest entrance.

Public controversy erupted in April of 1985 and a gender discrimination lawsuit was filed in November of 1985. Some law firms and other businesses participated in a boycott of the club.

As I understand it, for some time you have been a member of the club. Members frequently meet at the club and conduct business there over lunch or other social settings. This lawsuit was developed in 1985 and then in October of last year, as I understand it, the club's bylaws were changed.

My question is, did you ever make any effort to change the club's policy of excluding women?

Mr. CHRISTENSEN. Maybe I need to make a little longer answer than just, yes, I did or, no, I didn't.

Senator KENNEDY. Well, take whatever time you need.

Mr. CHRISTENSEN. My use of the Alta Club was, as you indicated, lunch only in a social setting. I didn't ever have dinner there in the evening. I didn't ever attend any of the club nights where free meals were provided, and I was never an officer, I was never a director. I never participated in the management in any sense, and so I really stayed out of the affairs pretty much.

But when this controversy came up, Pat Shea reminded me—and I had kind of forgotten this, but Pat Shea reminded me that I was one who spoke to members that we ought to get this changed, but I didn't ever take any formal action by way of a letter demanding it. I didn't take any—I didn't make any motions.

I've never attended the business meeting or an annual meeting of the club, and so my involvement was very, very minor. But I asked Mr. Shea if he would send a letter to the committee and outline what he recalls of my participation. He was, I think, fairly directly involved in it.

Senator KENNEDY. The committee, as I understand it, just received that.

I have not had an opportunity to read it.

Mr. CHRISTENSEN. I haven't seen it either.

Senator KENNEDY. All right. Well, we will certainly give you a copy of it. But as I understand from what you are saying, you spoke to Mr. Shea in support of, what, the boycott of the club or that it ought to change?

Mr. CHRISTENSEN. Well, the way Mr. Shea reported it to me is that he said that a number of the members had indicated to him that in informal conversations with me, I had supported admitting women to the club, but I don't—but I took no formal action in that regard.

Senator KENNEDY. And there were, as I understand it, some that boycotted it during that period of time while this case—for a period of 2 years, they did not go to the lunches and basically boycotted the club.

Mr. CHRISTENSEN. The Utah State Bar boycotted the club, for one.

Senator KENNEDY. Yes, but do you remember whether you did as well or not?

Mr. CHRISTENSEN. Personally, I did not. I continued to have lunch there on occasions about once a month. I'm not a club person.

Senator KENNEDY. I think the point that I'm trying to make here is that excluding women from clubs where business is done has been recognized as, you know, invidious discrimination because it tends to stigmatize women and keep them from participating fully in the business world. I think it is important that the officials of the Justice Department who are charged with supervising civil rights enforcement are sensitive to the subtle kinds of discrimination which exist.

Mr. CHRISTENSEN. And I'm sensitive to that, Senator.

Senator KENNEDY. Good, fine. Just finally, your predecessor described the job of Deputy Attorney General as "the chief operating officer" of the Department of Justice, the person charged with supervision of the administration of a budget in excess of $5.2 billion, and the management of 72,000 employees.

You have spent your entire professional career in the private practice of law with your firm. As I see from your résumé, about 95 percent of the work has been in the civil cases rather than in the criminal area.

What can you tell us about your own kind of experience that you think will enable you to manage and administer a department as vast and as complex as the Department of Justice?

Mr. CHRISTENSEN. Well, I was the managing partner in the law firm. I think I have management skills. I am able to work with the people who report to me immediately and receive their input, make decisions, implement them.

It is obviously a much larger office, but the number of people that I deal with on a daily basis is probably not much larger than the number that I dealt with on a daily basis in the law firm because there is so much delegation and so much structure, so many layers.

Senator KENNEDY. Okay. Well, you have been very patient and very responsive to the questions which I've offered. These are issues which I'm sure you can understand that our committee would want to hear you out on, and I appreciate your responses to all of the questions that have been put to you.

We will keep the record open for any additional statements by the members of the committee, or questions. We want to try and move this whole process, your nomination, forward rapidly because we know the vacancies that exist within the Department.

But we will leave the record open until the end of the week—well, that is tomorrow. We will leave it open through the weekend until Monday for any other kinds of comments and statements.

We thank you very much, and if there is no other further business, the committee will stand in recess. Thank you very much.

Mr. CHRISTENSEN. Thank you.

[Whereupon, at 11:55 a.m., the committee was adjourned.]

THE NOMINATION OF RICHARD L. THORNBURGH TO BE ATTORNEY GENERAL OF THE UNITED STATES

FRIDAY, AUGUST 5, 1988

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 9:52 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Edward M. Kennedy (acting chairman) presiding.

Also present: Senators Metzenbaum, DeConcini, Leahy, Heflin, Simon, Thurmond, Hatch, Simpson, Grassley, Specter, and Humphrey.

OPENING STATEMENT OF SENATOR EDWARD M. KENNEDY

Senator KENNEDY. We will come to order. The way that we will proceed this morning is that we will ask members if they will make a brief opening statement, and then we will swear the nominee in. We will listen to our colleagues, the distinguished Senators from Pennsylvania, and then we will proceed to general questioning from the ranking minority member and myself to cover some general matters. Then we will proceed with a 10-minute rule for the members to inquire. So with that understanding on procedure, we will move forward.

I want to welcome you to this committee, Governor Thornburgh. The Attorney General of the United States is a symbol of American justice and one of the highest positions of public trust in the land. His responsibility is to enforce the Nation's laws and protect the liberties of the people.

You will also be the chief lawyer for the government, in a very real sense, counsel to the President. Above all, your performance must inspire the confidence of all Americans in our system of justice and the rule of law.

The stewardship of Attorney General Meese has failed this trust. By attempting to roll back decades of progress in civil rights, and by giving favored treatment to friends, Mr. Meese has tarnished his high office and made the Department a symbol of injustice for millions of Americans.

If confirmed as Attorney General, it will be your responsibility to repair this damage and restore the confidence of the American people in the Attorney General so that the Department of Justice will once again live up to its proud name.

During the service of most past Attorneys General in Republican administrations, Democrats on the Judiciary Committee have maintained a close, constructive and cooperative relationship with the Department of Justice. And if you are confirmed, I would hope that we could enjoy a similar productive relationship in the remaining months of this administration.

You come before this committee with a long and distinguished record of public service as U.S. attorney for the Western District of Pennsylvania, as Assistant Attorney for the Criminal Division in the Department of Justice, and as Governor of Pennsylvania.

On a personal note, it has been a privilege to work with you in your recent capacity as director of the Institute of Politics at the Kennedy School of Government at Harvard. Your role there is a further demonstration of your commitment to excellence in public service, and I am hopeful you will be free to return to Harvard after January 20 of next year. [Laughter.]

I look forward to your testimony this morning and I congratulate you on your nomination to be Attorney General of the United States. It is a pleasure to see Mrs. Thornburgh here as well. We will ask you to introduce her at an appropriate time.

I recognize the Senator from South Carolina.

Senator THURMOND. Mr. Chairman, this morning we begin the confirmation hearing on Richard L. Thornburgh, President Reagan's nominee to be the Attorney General of the United States.

In recent weeks, there has been a great deal of discussion regarding the role of the Attorney General. There are some who have said that a prerequisite for this position is an individual's loyalty to the President who nominated him. There are others who believe that the most important requirement to be Attorney General is an individual's commitment to the fair and equitable administration of justice for all Americans.

In my opinion, both points of view are correct. I would just add one other criteria, and that is that an individual must perform the duties of his office in an independent and uncompromising manner.

I feel that in Governor Thornburgh we have a nominee who will demonstrate all of the fine characteristics an Attorney General must possess; namely, integrity, good judgment, competence, professionalism, and independence.

Moreover, I am certain that Governor Thornburgh is an individual who understands the importance of this position and would do nothing that in any way will reflect poorly on the office.

Governor Thornburgh's background and experience have prepared him well for this position. He received his bachelor's degree from Yale University in 1954, and in 1957 graduated from the University of Pittsburgh School of Law.

From 1957 to 1959, he was staff counsel for a large corporation. From 1959 to 1969, he was in the private practice of law. In 1967, Mr. Thornburgh began a long and distinguished period of public service. That year, he was elected delegate to the Pennsylvania Constitutional Convention.

From 1969 to 1975, he served as U.S. attorney for the Western District of Pennsylvania. In 1975, Mr. Thornburgh was appointed as Assistant Attorney General for the Criminal Division and held that position until 1977.

He then practiced law for 2 years. In 1979, Mr. Thornburgh was elected Governor of the Commonwealth of Pennsylvania, where he served until 1987. Governor Thornburgh is now in the private practice of law and, in addition, serves as Director of the Institute of Politics, John F. Kennedy School of Government, at Harvard University. So I am sure we will have no trouble with our Chairman getting you confirmed. [Laughter.]

Governor Thornburgh has written a number of impressive legal articles and is widely regarded as one of this Nation's most able attorneys. His experience as a practicing attorney, prosecutor, and as Governor of his State, will be beneficial to him as this country's chief law enforcement officer.

He is an individual who has a thorough understanding of our system of government and realizes the importance of the role of the Attorney General. I feel that he will give competent advice and fair opinions to the President on all issues which may arise and, more importantly, that he will uphold the trust and confidence reposed in him.

Governor Thornburgh, you are to be congratulated on your nomination to this important position, and I look forward to hearing your testimony.

Senator **Kennedy**. The Senator from Ohio, Senator Metzenbaum.

Senator **Metzenbaum**. Governor Thornburgh, you are very fortunate. In this instance, you have nowhere to go but up. This is the fourth time during this administration that we have conducted hearings on a nomination for Attorney General.

During the tenure of the present Attorney General, we have learned, or, more accurately, relearned, how important this high office is. A highly respected Attorney General elevates the Nation's respect for law. He or she serves as a model of integrity and promotes compliance with the law throughout government. The record shows that a poor Attorney General can undermine the rule of law and bring disgrace to the Department of Justice.

I suggest four important lessons we have learned from the trauma of the last 3½ years. Lesson one: A President should not appoint a close friend and political crony to be Attorney General. Such a relationship can blind the President to the poor performance of an Attorney General. It can prevent an Attorney General from vigorously demanding compliance with the law by others in the same administration. It is difficult to believe that the Iran-contra fiasco would have occurred if the Nation's Attorney General demanded scrupulous adherence to the law throughout all levels of government.

Lesson two: The Attorney General should place respect for the law and effective law enforcement above political ideology. During the last few years, we have witnessed continued attacks on long-established constitutional principles while the morale among the career attorneys at the Department plummeted.

Lesson three: The Attorney General must be a highly competent lawyer. The botched Iran-contra investigation, consistent errors in financial disclosures, and nominations which had to be recalled are a few painful reminders of the results of incompetence.

Lesson four: The Attorney General cannot ignore ethical considerations. "Never been indicted" is not a sufficient qualification to be the Nation's chief law enforcement officer. Insensitivity to ethical standards at the highest levels of government begins to undermine ethics at all levels.

Not long ago, the Nation thought of the Justice Department as the guardian of freedom and civil rights. The American people believed the Department was dedicated to preventing crime and to preserving and protecting our most precious constitutional traditions. The decline of the Department has been one of the most unfortunate and harmful legacies of the recent past.

Now, the Department stands on the edge of a new era of leadership. The committee must review your record closely, but I am frank to say to you that the indications are that the President has made a wise choice. We hope so. All of us can hope that the dark cloud which has hung over the Department of Justice is about to come to an end.

Senator **Kennedy**. The Senator from Utah, Senator Hatch.

Senator **Hatch**. Mr. Chairman, I ask unanimous consent that my statement be placed in the record, and I will just make these comments.

[The statement of Senator Hatch follows:]

From the office of

SEN. ORRIN HATCH

Washington, D.C. 20510

August 5, 1988 Contact: Paul Smith, 202/224-9854

STATEMENT OF SEN. ORRIN G. HATCH
BEFORE THE SENATE COMMITTEE ON THE JUDICIARY
THE NOMINATION OF RICHARD THORNBURGH
TO BE ATTORNEY GENERAL OF THE UNITED STATES

Mr. Chairman. One of the distinctive features of President Ronald Reagan's Administration has been the President's ability to find exceptional individuals who are willing to accept the grave trust of enforcing our nation's laws. Dick Thornburgh will undoubtedly be remembered as a brilliant choice to serve as Attorney General in the President's last year in office.

We have already heard a great deal about his background and qualifications. Perhaps the most important observation about those qualifications is that his legal career has exposed him to almost every facet of the legal profession. He served for two years as counsel to a major American business, for ten years as an associate in an important Pittsburgh law firm, for two years as delegate to the Pennsylvania Constitutional Convention, for six years as a U.S. Attorney, for two years as an Assistant Attorney General in the Department of Justice, for four years as a partner in a major law firm, for nearly two years as a professor of law and political science, and for eight years as the chief executive of his state. It would be hard to imagine a finer set of credentials for a nominee for Attorney General.

Moreover, in all of these significant positions, Governor Thornburgh served with remarkable distinction. One publication had this to say about his service as governor: "When Thornburgh took office, Pennsylvania state government was awash in corruption and red ink, while the state's economy was hopelessly dependent on heavy industry, reeling toward depression. Today Pennsylvanians praise Thornburgh as the governor who brought efficiency and integrity to state government, balanced the budget, brought unemployment below the national average, and reoriented the state's economy from past to future."

(MORE)

I have no doubt that Governor Thornburgh will bring a similar high standard of "efficiency and integrity" to the Justice Department.

One thing is certain: he will not need to spend time learning his job.

He will not need to learn the intricacies of prosecutorial discretion. He made prosecuting choices for six years as a U.S. Attorney.

He will not need to inquire about Justice Department procedures. He was an Assistant Attorney General for two years and even served as Acting Deputy Attorney General, the second highest post in the department.

He will not need to study applications of the rules of criminal procedure. He has applied those rules in important criminal trials.

He will not need to acquire the skills of enforcing our drug laws. He has enforced those laws during crucial periods.

He will not need to gain an understanding of the need for full and fair civil rights protections. He has already enforced those principles of fairness.

He will not need to learn the value of working closely with Congress to win the war on drugs and violent crime. He has worked with Congress and his state legislature on the same issues.

He will not need to be reminded of the appropriate balance between fair competition and monopolistic force in antitrust policies. Nor will he need to learn the importance of selecting judicial candidates with a full grasp of our system of laws and a high degree of judicial temperament. Nor will he need to learn the importance of budgetary priorities in times of fiscal constraints. These duties and much more he has already done.

President Reagan and the entire nation is fortunate to have an individual of Governor Thornburgh's merit and stature to take over the vital duties of the Department of Justice.

I welcome you to the committee, Dick, and look forward to serving with you.

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Senator **Hatch**. I have known Dick and Ginny Thornburgh for almost 30 years. We are both graduates of the University of Pittsburgh School of Law and he set some very, very great standards when he was at that university, and I have had a great deal of respect for Dick Thornburgh during all those years.

Let me just say this, Dick. In the Wall Street Journal this morning was an article about the so-called Defeo report, and many years ago a fellow from Pittsburgh brought what he thought was the Defeo report to me. It was just a few smattering of pages; it certainly was not the report.

And I think in light of today's difficulties with Panama, it might be well for us to get that report. So when it comes time for my questioning of you, I am going to ask you. I will just mention to you in advance that I hope that when you become Attorney General and are confirmed that you will produce that report for this committee. It has been denied this committee for all these years.

At least we will know once and for all really what was involved and how much we knew back then about both Torrijos and Noriega. That is all I am going to say.

I just want to congratulate you on this excellent appointment. I want to congratulate you on the opportunity to serve in this highest of positions in our government, and I want to congratulate you for the reputation and for the work that you have done through all of these years. And I want to congratulate your family for their support of you in every way.

Thanks, Mr. Chairman.

Senator **Kennedy**. The Senator from Vermont, Mr. Leahy.

Senator **Leahy**. Thank you, Mr. Chairman.

Governor Thornburgh, I know you have had a distinguished career, the latest position being as the Director at the Kennedy School at Harvard. I am glad that you were able to overcome any antipathy in the administration toward people from Harvard boutiques and I am glad to see you here, and hope you enjoy this.

Mr. Chairman, the last time this committee met to confirm an Attorney General was in 1985, and at that time I discussed with the nominee the Attorney General's role in American society.

I told the nominee that except for the President, no one in the Nation does more through action, or inaction, for that matter, to set the moral tone of governance. I told him that while the Supreme Court has the last word on what our laws mean, often the Attorney General has the first word. The Attorney General sets the legal policies for government and, by example, he or she sets moral and political policies as well.

Something has happened to the Attorney General's office over the last 3 years. The job description did not change, but a lot of the confidence of our country in the office did.

Now, Governor Thornburgh, if you are confirmed by the Senate as Attorney General, as I assume you will be, your foremost responsibility will be to restore public confidence in our Nation's number one law enforcement agency. It is going to be up to you to start to recapture the Department's moral authority, which actually goes well beyond any legal authority it has.

America will expect you to be at the forefront of the fight for equal rights under the law. We want you to make us proud of a

Justice Department where the very first loyalty, from the Attorney General to the staff attorneys in every division, is to the Constitution and the people that we are sworn to serve.

I want all Americans to feel a sense of pride and confidence that Justice Department lawyers are on the case. Justice Department lawyers have to know that we respect them as aggressive advocates who embody the values of our legal system. I do not want to hear, as we did from some Justice Department officials last week, that they are embarrassed to say where they work.

Now, Governor, from everything I have seen so far, the President's decision to nominate you was guided by your competence, not ideology or loyalty, and that is how it should be.

You are a former prosecutor, a former Assistant Attorney General, and a former Governor. You have certainly got the background that this job demands. I have enjoyed the chance we have had to talk, and I was delighted to meet your lovely wife here today.

No one here envies the task that awaits you, but this Senator, and I think you will find the members of this committee from both parties, stand willing to work with you. We want a good Justice Department.

I told you yesterday that the most important thing you can accomplish is to have a strong, good, competent, respected Justice Department in place in January, when the next President is sworn in. If you accomplish that, you will have done a great service for the country.

Thank you, Mr. Chairman.

Senator KENNEDY. The Senator from Pennsylvania, Mr. Specter.

STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator SPECTER. Thank you, Mr. Chairman.

It varies as to whether the home State Senators get to speak before the members of the committee, so I thought I would assume this other chair that I have today to talk a little earlier.

I am delighted to join my colleagues in welcoming you to this hearing. Aside from the Presidency, I think there is no more important job in the Federal Government than Attorney General of the United States, and I know that with Dick Thornburgh in that office we will not have to talk about ethics anymore.

What I am looking forward to is the kind of strong, perhaps better stated, tough prosecution to restore deterrence as a very important element of the law. We have known each other for a long time, but at one stage in our relative careers you were prosecuting corruption in Pittsburgh and I was doing the same thing in Philadelphia.

You established an outstanding reputation by putting teeth in the law and by showing criminal violators that there was going to be a tough penalty at the end of the route; that crime did not pay.

When I see in the front page of the morning papers a note that the Hertz Corporation perpetrated a $13 million fraud on consumers and got away with a slap on the wrist on a fine, I find that morally repugnant. I have confidence that when you get to the Justice Department that that is going to be changed.

There are many, many roles of the Attorney General of the United States, and I intend to discuss them with you in terms of priorities when that time comes today briefly. But the aspect of deterrence is one that has to be underscored, and that is something that Dick Thornburgh knows and understands.

I think that it may be that the kind of a job you will do in that position, even in the short time, may have a consequence that if a resident of Massachusetts becomes President next January that the kind of a job you will do will be a motive for the American people to see to it that the circumstances are right to keep you in office into 1989.

Thank you very much, Mr. Chairman.

Senator KENNEDY. The Senator from Illinois, Mr. Simon.

Senator SIMON. Thank you, Mr. Chairman. I kind of like the assumption of the last remark made by Senator Specter.

Let me just say this to you, Governor: What I look for in an Attorney General is not simply ability, and there is no question that you have that. I want someone who is going to be a champion of civil rights; that every citizen in this country, no matter what his or her station, will look to the Attorney General as the champion of civil rights, as the defender of civil liberties; willingness to take an unpopular stand to defend the basic liberties of our people; and then, finally, fundamental loyalty to the law and to the Constitution, not to an individual, not to a political party.

With the possible exception of the Chief Justice of the United States, you more than any person are the symbol of justice in this country. I want every citizen in this country to look to the Attorney General's office and say that person represents real justice in this country. On the basis of what I know now, I believe you can fulfill that awesome mandate.

Thank you, Mr. Chairman.

Senator KENNEDY. The Senator from Iowa, Mr. Grassley.

Senator GRASSLEY. Thank you, Mr. Chairman.

I want to welcome Mr. Thornburgh before the committee, as all my colleagues have done. I appreciate that we have before this committee a person with a distinguished record of public service to be the next Attorney General.

And it seems to me that you are particularly well-suited for this new challenge. First of all, Governor Thornburgh has an impressive career as U.S. attorney, winning high praise for aggressively prosecuting public corruption.

This experience puts him in a very good position of leadership in the effort to bring honesty and integrity to Defense Department acquisition system procurement fraud, and we need that.

Second, he served with distinction as an Assistant Attorney General for the Criminal Division at another troubled time for the Justice Department, and Governor Thornburgh there created the Public Integrity Section to restore public confidence in the Federal Government.

Third, it seems that your leadership as Governor of Pennsylvania is a success story because you brought back honesty into State government, balanced the budget and brought unemployment down, and revitalized the economy with joint public-private initiatives.

In short, the Governor promises to bring to the Justice Department important experience and accomplishment. Some believe that the Justice Department is in need of major overhaul. The record of the Department's achievements, however, shows that the dedicated men and women of the Justice Department, who are there over the long haul, have reason to be proud. Recently, we learned that perception may differ from that real record.

I have confidence that Governor Thornburgh possesses the qualities necessary to set the record straight and, I hope, to continue pursuing the important work of the Justice Department. Thank you.

Senator KENNEDY. The Senator from New Hampshire, Mr. Humphrey.

Senator HUMPHREY. Thank you, Mr. Chairman.

Good morning, Governor. Congratulations on your nomination. There is no question about your superb professional qualifications. There is no question about your confirmation.

At the time of the nomination, I expressed some concern about matters at the political level. There appeared to be some issues, important issues, where there were significant divergences between your point of view and that of the President.

There is little point in having party-based elections in this country if Presidents do not make nominations of persons who are very close to them on cardinal points of policy and point of view.

I will explore those matters of concern a bit later when my turn for questioning comes, but again I offer you my congratulations.

Mr. Chairman, I will place my prepared statement in the record.

[The statement of Senator Humphrey follows:]

SENATE JUDICIARY COMMITTEE

HEARING ON NOMINATION OF RICHARD L. THORNBURGH TO BE ATTORNEY GENERAL OF THE UNITED STATES
AUGUST 5, 1988

STATEMENT OF SENATOR GORDON J. HUMPHREY

GOVERNOR THORNBURGH, WELCOME TO THE JUDICIARY COMMITTEE.

THE LAST NOMINEE FOR THE POST OF ATTORNEY GENERAL, ED MEESE, RECEIVED A HARSH AND HOSTILE RECEPTION FROM CERTAIN MEMBERS OF THIS COMMITTEE FROM THE MOMENT HIS NOMINATION WAS KNOWN. THIS HOSTILITY NEVER RELENTED, AND MADE THE PERFORMANCE OF HIS DUTIES EVEN MORE DIFFICULT THAN IT OTHERWISE WOULD HAVE BEEN.

IF YOU ARE CONFIRMED, I HOPE THE COMMITTEE WILL EXTEND YOU MORE CIVIL AND CORDIAL TREATMENT THAN WAS THE CASE WITH MR. MEESE. WE WILL HAVE OUR SHARP DIFFERENCES, AND IN FACT YOU AND I HAVE ALREADY DISCUSSED SOME ISSUES ON WHICH WE HAVE DISAGREEMENT. BUT I HOPE THAT THE DIFFERNCES BETWEEN YOU AND MEMBERS OF THIS COMMITTEE CAN BE WORKED OUT IN A MORE POSITIVE ATMOSPHERE THAN HAS RECENTLY PREVAILED. THOSE WHO DISAGREE WITH OUR VIEWS ON JUSTICE DEPARTMENT POLICY SHOULD NOT BE TARGETTED FOR PERSECUTION ON THAT BASIS.

THERE IS NO DOUBT IN MY MIND THAT YOU HAVE THE PROFESSIONAL, PERSONAL, AND ADMINISTRATIVE QUALITIES TO BE A GOOD ATTORNEY GENERAL. YOUR RECORD AS AN EFFECTIVE PROSECUTOR AND U.S. ATTORNEY SHOWS THAT YOU ARE PARTICULARLY WELL-EQUIPPED TO LEAD THE FEDERAL GOVERNMENT'S EFFORTS AGAINST VIOLENT CRIME, ORGANIZED CRIME, AND THE SINISTER DRUG TRADE. YOUR EXPERIENCE AS A POPULAR GOVERNOR OF ONE OF THE NATION'S LARGEST STATES DEMONSTRATES THAT YOU HAVE THE LEADERSHIP AND ADMINISTRATIVE ABILITY TO RUN THE JUSTICE DEPARTMENT EFFECTIVELY.

ON THESE COUNTS, YOUR QUALIFICATIONS FOR ATTORNEY GENERAL ARE OUTSTANDING. AND IF THOSE WERE THE ONLY ISSUES TO BE CONSIDERED, I WOULD HAVE NO RESERVATIONS AT ALL ABOUT ENTHUSIASTICALLY SUPPORTING YOUR CONFIRMATION.

HOWEVER, I DO HAVE SOME CONCERNS ABOUT YOUR APPROACH TO SOME OF THE LEGAL AND CONSTITUTIONAL ISSUES I CONSIDER OF CRITICAL IMPORTANCE IN THIS COUNTRY TODAY.

BECAUSE THE SUPREME COURT'S TRAGICALLY-FLAWED DICTATE IN ROE V. WADE REMAINS UNCORRECTED, THE CLINICAL EXTERMINATION OF MILLIONS OF PRE-NATAL INFANTS CONTINUES TO CAST A DARK CLOUD OVER THIS NATION. IN 1980 AND 1984, THE PEOPLE ELECTED A PRESIDENT COMMITTED TO PROTECT THE BASIC RIGHT TO LIFE OF THESE HELPLESS UNBORN CHILDREN. YET LITTLE HAS CHANGED. IF ANYTHING, ABORTION-ON-DEMAND IS EVEN MORE A "WAY OF LIFE" TODAY THAN IT WAS BEFORE. AND HOW IRONIC TO SAY THAT ABORTION, WHICH TAKES LIFE, HAS BECOME A "WAY OF LIFE" IN THIS NATION.

THERE IS PROBABLY LITTLE AN ATTORNEY GENERAL CAN DO IN THE REMAINING MONTHS OF THIS ADMINISTRATION TO EFFECT SIGNIFICANT CHANGES IN APPROACH TO THE ABORTION ISSUE. NONETHELESS, THE APPOINTMENT OF A NEW ATTORNEY GENERAL IS OF HIGH IMPORTANCE UNDER ANY CIRCUMSTANCES. AND IF VICE-PRESIDENT BUSH PREVAILS IN THE FORTHCOMING ELECTION, I SUSPECT YOU WILL BE A PRIME CANDIDATE TO STAY ON AS ATTORNEY GENERAL IN A BUSH ADMINISTRATION.

SO I AM VERY CONCERNED ABOUT YOUR SENSITIVITY TO THE RIGHTS OF UNBORN CHILDREN.

WE HEAR SO MUCH ABOUT "CIVIL RIGHTS" IN THIS CONGRESS. THE SENATE JUST PASSED LEGISLATION WHICH EXTENDS EXTRAORDINARY PROTECTION TO SUCH CATEGORIES AS PSYCHOPATHS AND ALCOHOLICS IN THE HOUSING AREA, IN THE NAME OF CIVIL RIGHTS. THIS COMMITTEE IS CONSIDERING A BILL WHICH WOULD RECOGNIZE PRACTICING HOMOSEXUALS AS A SPECIAL CIVIL RIGHTS CATEGORY. AND IT GOES ON AND ON.

BUT WHAT MINORITY IS MORE OPPRESSED, MORE HELPLESS, AND MORE IN NEED OF THE GOVERNMENT'S PROTECTION THAN THE THOUSANDS OF PRE-NATAL INFANTS WHO ARE SO COLDLY EXTERMINATED EVERY DAY? I CAN THINK OF NONE. BECAUSE THERE IS NONE.

YOU HAVE EXPRESSED YOUR FIRM OPPOSITION TO ABORTION ON DEMAND. AND YOU HAVE EXPRESSED YOUR COMMITMENT TO SUPPORT AND ENFORCE THE HYDE AMENDMENTS, WHICH BAR FEDERAL FUNDING OF ABORTION EXCEPT TO SAVE THE LIFE OF THE MOTHER. YET, AS GOVERNOR OF PENNSYLVANIA, YOU HAVE VETOED LEGISLATION WHICH SOUGHT TO EXPAND THE RIGHTS AND PROTECTIONS OF UNBORN CHILDREN. THIS CAUSES ME CONCERN, EVEN THOUGH I AM FULLY AWARE THAT THE SUPREME COURT LATER OVERTURNED A BILL REGULATING ABORTION THAT YOU DID SIGN.

IF THE OPPORTUNITY ARISES, I HOPE YOU WILL SHOW LEADERSHIP IN SEEKING LEGAL AND CONSTITUTIONAL MEANS TO PROTECT THE RIGHTS OF PRE-NATAL INFANTS. I HOPE YOU WILL BE ALERT TO OPPORTUNITIES TO PERSUADE THE SUPREME COURT TO REVISIT ROE V. WADE AND ITS PROGENY. IF YOU WANT TO MAKE A GENUINE COMMIT-

MENT TO CIVIL RIGHTS AS ATTORNEY GENERAL, I CAN THINK OF NO AREA OF CIVIL RIGHTS THAT SO URGENTLY NEEDS ATTENTION AS THIS. NO RIGHT IS MORE BASIC THAN THE RIGHT TO LIFE.

THERE ARE OTHER AREAS I WOULD LIKE TO PURSUE WITH YOU, BUT THEY CAN WAIT FOR ANOTHER DAY. YOUR INTEGRITY, PROFESSIONAL ACHIEVEMENTS, AND LEADERSHIP ABILITIES ARE OUTSTANDING, AND SHOULD MAKE YOU A STRONG ATTORNEY GENERAL. I AM ALSO HOPEFUL THAT YOU WILL BE SENSITIVE TO THE CONCERNS I HAVE JUST EXPRESSED, AND IN THAT SPIRIT I PLAN TO SUPPORT YOUR PROMPT CONFIRMATION.

Senator **Kennedy**. Very fine.

I recognize our friend and colleague, the Senator from Pennsylvania, Senator Heinz.

STATEMENT OF HON. JOHN HEINZ, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator **Heinz**. Mr. Chairman, thank you very much. It is a great pleasure and a privilege to be here to introduce to this committee Dick Thornburgh, and like many members of the committee his nomination is one that I unreservedly and fully support.

For those of you who are less privileged in having been associated with Dick Thornburgh than I or Senator Specter or Orrin Hatch, I think that as you examine this man and his record that I can be confident that the members of the committee will come to the same conclusion that I expressed a moment ago.

I have a lot of personal affection for this man, for Ginny, his wife, for his family. They are a remarkable family. They have had many challenges individually and together. They have accomplished so much. They have given so greatly of themselves to other people during the some 24 years that I have known them both.

I know only one minor blot on Dick's record. It was that he ran for Congress. He had terrible campaign management, unhappily. I was his campaign chairman and, of course, he never had a chance, which goes to show that he may be in pretty good shape, but I am not.

Senator **Hatch**. I often wondered about that race, Dick. I wondered what the reason was.

Senator **Heinz**. Dick Thornburgh never had a chance.

Mr. **Thornburgh**. I prefer to take the fifth amendment on that, Senator. [Laughter.]

Senator **Heinz**. Dick Thornburgh was not at that point given a chance to stir things up in Washington. [Laughter.]

That is an inside joke we will explain later, but not on the record, Mr. Chairman. [Laughter.]

Very seriously, it is said quite correctly that we are a Nation of laws, not of men. But it is fallible men and women who are responsible for upholding the framework of our enduring democracy.

So in determining whether a President's nominee ought to be approved, we look not at the résumé of the person, impressive though it may be, but at that individual's personal qualities.

Where Dick Thornburgh is concerned, he certainly has the legal experience and the intellectual prowess to be our chief law enforcement officer. Anyone who has witnessed his performance under great difficulty and stress such as he encountered at Three Mile Island—and Senator Alan Simpson and I were privileged to have a bird's eye view at the time and later—will know of the competence and composure that Dick Thornburgh can bring to the position of Attorney General which it requires.

But he will bring something more to his job, Mr. Chairman, than these personal attributes or record as a tough and successful prosecutor—a long list of accomplishments, guiding our State through a series of challenging years. Senator Grassley referred to them.

But if there is something extra he brings, it is a sense that public office begins with the understanding that one's performance is going to be judged not just by one's contemporaries, but by those who come along later as future generations as well.

Winston Churchill, in reflecting on government service, once observed, and I quote, "The only guide to a man is his conscience. The only shield to his memory is the rectitude and sincerity of his actions."

Throughout his career as a private lawyer, as a government prosecutor, as a governor and chief executive, Dick Thornburgh has stayed true to his internal compass, which has always pointed directly towards a profound understanding of the public trust.

Mr. Chairman, each member of this committee believes, as I do, as I know Dick does, that one of the important responsibilities we have is to cultivate in the largest possible number of our younger citizens, our future generation, an appreciation of both the benefits and the responsibilities of citizenship which come because they are American and free.

Dick Thornburgh's decision to accept the position at the Kennedy School of Government says something about his view of public service; that it is not just about training people in government skills, but about educating them in the responsibilities as government officials in a democracy.

Of course, the Kennedy School also is about resolving conflicts on issues. We have differences in a free society, but if we cannot expect unanimity on issues, we do expect public servants to perform their jobs to the best of their ability and, most importantly, with impartiality, integrity, and fairness.

That is what justice demands and is all about. It is also what Dick Thornburgh has practiced throughout his career, and it is why I believe the nomination of Dick Thornburgh to be Attorney General of the United States deserves your support.

Thank you.

[The statement of Senator Heinz follows:]

Remarks of Senator John Heinz (R-PA)
Nomination of Richard L. Thornburgh
to U.S. Attorney General
SENATE JUDICIARY COMMITTEE
August 5, 1988

It's a privilege to introduce this Committee to the President's nominee for Attorney General of the United States, Dick Thornburgh. It is a nomination that I support completely and without reservation. As you examine this man and his record, I am confident that the members of this Committee will come to the same conclusion.

I have a great deal of affection personally for Dick, Ginny and their family, and genuine admiration for the challenges they have faced and what they have accomplished together during the twenty four years I've known them.

It's often said that we are a nation of laws, not men; but it is fallible men and women who are responsible for upholding the framework of our enduring democracy. So, in determining whether a President's nominee ought to be approved, we look not just at a resume but to the personal qualities of a candidate.

There is no question that Dick Thornburgh has the legal experience and the intellectual prowess to be our nation's chief law enforcement officer. Anyone who witnessed his performance, as Senator Simpson and I did, during the Three Mile Island incident will know that he has the competence and composure the position of Attorney General requires.

He will bring something more to the job than his personal attributes or a record as a tough and successful prosecutor, or a long list of accomplishments in guiding our state through a series of challenging years. It is a sense of public office that begins with the notion that one's performance is measured by one's contemporaries as well as future generations.

Winston Churchill, in reflecting on government service, once said,

> "The only guide to a man is his conscience; the only shield to his memory is the rectitude and sincerity of his actions."

As a private lawyer, as a government prosecutor, and as a chief executive, Dick has stayed true to his internal moral compass and his profound understanding of the public trust.

His record on civil rights reflects not only duty to the Constitution but a personal commitment to advancing equal opportunity for all Americans.

Each member of this Committee believes, as I do, as Dick does, that one of our roles is to cultivate in the largest possible number of our future citizens an appreciation of both the benefits and responsibilities which come to them because they are Americans and free.

His decision to accept the position at the Kennedy School of Government says something about Dick's view of public service.

The Kennedy School is not just about training people in government skills, but educating them about the responsibilities of government officials in a democracy.

Politics is about resolving conflicts, and we cannot expect agreement on every policy that a public official pursues.

But, if we cannot expect unanimity on issues, we do expect public servants to perform their jobs to the best of their ability with fairness, impartiality, integrity and justice.

That is the ideal to which Dick has aspired and I believe he has achieved throughout his career. It is the ideal which he wishes to instill in others, and is why I believe that his nomination to become Attorney General of the United States deserves your support.

Senator KENNEDY. Congressman, we want to welcome you to our committee. We look forward to whatever comments you might have, Congressman Clinger.

STATEMENT OF HON. WILLIAM F. CLINGER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. CLINGER. Thank you very much, Mr. Chairman, and I am delighted to have this opportunity to represent my colleagues from Pennsylvania on the other side of the Capitol in coming before you today to endorse this nomination.

I think that I am in a position to do that, having known the nominee for well over 20 years both in a personal and professional relationship, and I think that I can perhaps offer some insights into his character.

I have pondered what one event might perhaps best typify Governor Thornburgh's outstanding and principled leadership, and I think I have come to identify one event which perhaps does that.

Before 1978, the Pennsylvania Department of Transportation had been operated as a tool of the party in power, whatever party was in power, and was staffed by individuals selected primarily for their party affiliation rather than their ability, and party officials were able to find jobs for their supporters and gave them political power. When the election year came, they worked hard for their election; it meant their jobs.

While that system of patronage created a very powerful political weapon, it created an awful Department of Transportation. Roads throughout the State were a disaster. PennDOT was very badly mismanaged because it was really managed by incompetents.

So during his first campaign, Dick Thornburgh pledged to wipe out this very corrupt system of patronage, spoils system, and create a transportation department that would serve the people of Pennsylvania. He carried through on that promise, crafted a department that hired people on merit, and only on merit, and then hired people that could do the job best, regardless of their political affiliation.

Dick Thornburgh has always been a man of integrity, one who kept his promises, and in that case he offended a large number of people. Political colleagues were offended by his action in that regard.

But when he took office in 1979, he promised an administration that would battle corruption, tolerate no conflict of interest, and he kept that promise. In his 8 years as governor, his record of honesty and that of his administration, I think, are unparalleled.

These qualities of integrity, courage, and dedication to serving the people are vital ones for the Attorney General to have, but there are others. Leadership, the ability to deal with the myriad tasks and complexity of Department of Justice plus the strength of character to make the tough decisions, I think, are equally necessary for an Attorney General to be effective, and he has these qualities, Mr. Chairman.

As a leader, I firmly believe he is one of the very best this Nation has to offer, and as Senator Heinz has already mentioned, his leadership during the time of America's worse nuclear accident at Three Mile Island provided steady and effective management of a crisis to avoid widespread panic, and really was instrumental in sustaining the people of Pennsylvania through what was a very terrible time.

He is also tough on those who misuse the public trust or endanger its citizens. During his tenure as Governor, he signed laws that imposed mandatory jail sentences for violent criminals and repeat offenders. The State police force was expanded and special antidrug and organized crime units were created. He made it clear that crime would not pay in Pennsylvania.

Being tough on crime has been a career-long characteristic of Dick Thornburgh. During his tenure as U.S. attorney, as Senator Grassley alluded to, he enforced the laws of this Nation and was so successful that President Ford, as we know, appointed him Assistant Attorney General for Criminal Affairs in 1975.

I think, Mr. Chairman, at this point I have to make a slight confession. For some years now, I have supplemented my income modestly by betting people that they could not name the first person to serve as Attorney General under President Jimmy Carter.

They always say Griffin Bell, or if they are really confused they say Ben Civiletti. The fact is that it was Dick Thornburgh who was Acting Attorney General for a number of hours during the first week of the Carter administration.

So in this instance, Mr. Chairman, with your advice and consent, he will be merely resuming a post which he held with distinction 12 years ago. He will not require on-the-job training, Mr. Chairman.

As I said, Dick Thornburgh served as Governor of the Commonwealth of Pennsylvania for 8 years and was really more popular when he left office than when he came in, which I think is the reverse of most two-term governors' experience.

The reason for this, I believe, is twofold. First, he never took himself too seriously and, second, he took the job very seriously. So in addition to the other qualities Dick Thornburgh will bring to this job, let me add two more, one not often cited as a part of the job description. They are a sense of humor and a non-inflated ego.

So, Mr. Chairman, I strongly urge the committee to report this nomination favorably to the full Senate and that Richard Thornburgh be confirmed as Attorney General as quickly as possible, and I thank you for permitting me to recommend my good friend and this good man to your committee.

Senator KENNEDY. Governor, you might wonder about these proceedings. You have gotten off to a very good start here, and I think we will recognize our remaining colleagues who perhaps want to make a comment.

I recognize the Senator from Alabama.

Senator HEFLIN. Well, I am sorry I had to attend another meeting when opening statements were given. I am pleased that we are moving forward with it. I realize that you have got a short term, unless something unusual happens, and so in that short term I am not sure that you can cause miracles to occur at the Department of Justice.

I think maybe you are going to have to sit down and give some priorities as to what you want to accomplish at the Department of

Justice between now and when the next President takes over and makes an appointment of the Attorney General.

I do not believe that you have got time to completely reform the Department of Justice and turn things completely in an opposite direction, but I think there are some priorities.

Certainly, the priority of the relationship of various agencies dealing with drugs is tremendously important. I think you also have to assume that you have the duty, regardless of priority, of protection. You have to protect the country against law violators. You have got certain obligations in regard to protecting the civil rights of individuals, and we hope that we can start on the movement of protecting society against drug abusers.

So while it is a short term, nevertheless you can leave your mark, and I hope that you will leave a mark that shows that in a short period of time much can be accomplished. Thank you.

[The statement of Senator Heflin follows:]

SPEECH OF SENATOR HOWELL T. HEFLIN
ON THE NOMINATION OF RICHARD L. THORNBURGH
TO BE THE ATTORNEY GENERAL OF THE
UNITED STATES

AUGUST 5, 1988

MR. CHAIRMAN,

GOVERNOR THORNBURGH, I WOULD FIRST LIKE TO WISH A WARM WELCOME TO YOU AND YOUR FAMILY TO TODAY'S HEARING.

AS MANY HERE HAVE STATED, THE POSITION FOR WHICH YOU HAVE BEEN NOMINATED BY THE PRESIDENT IS ONE OF THE MOST IMPORTANT IN OUR LAND.

THE ATTORNEY GENERAL IS THE CHIEF LAW OFFICER OF OUR FEDERAL GOVERNMENT. IT IS OFTEN SAID THAT EACH LAWYER AT THE DEPARTMENT OF JUSTICE SERVES AS THE ADVOCATE OF THE RIGHTS OF EVERY AMERICAN. IF CONFIRMED, YOU WILL BE IN CHARGE OF THE THOUSANDS OF LAWYERS, INVESTIGATORS, AND AGENTS AT THE DEPARTMENT OF JUSTICE. BUT EVEN MORE IMPORTANTLY, IF CONFIRMED, YOU WILL PLAY A KEY ROLE IN PROTECTING THE RIGHTS OF MINORITIES FROM ABUSE BY A MAJORITY, YOU WILL PROTECT SOCIETY AGAINST CRIMINALS AND SUBVERSION, YOU WILL SAFEGUARD AMERICAN

CONSUMERS, AND YOU WILL ENFORCE OUR NATION'S LAWS AGAINST ILLEGAL DRUGS.

YOUR BACKGROUND AND RESUME INDICATE THAT YOU ARE A MAN WELL QUALIFIED TO BE ATTORNEY GENERAL. YOU HAVE BEEN INVOLVED IN THE PRIVATE PRACTICE OF LAW. YOU HAVE SERVED AS A U.S. ATTORNEY, HEADED THE JUSTICE DEPARTMENT'S CRIMINAL DIVISION AND SERVED AS GOVERNOR OF PENNSYLVANIA. HOWEVER, IN MY JUDGEMENT, AMERICA'S ATTORNEY GENERAL MUST HAVE MORE THAN A GOOD RESUME. HE MUST BE AN INDIVIDUAL DEDICATED TO THE LETTER AND SPIRIT OF THE CONSTITUTION AND MUST BE A CHAMPION OF EQUAL JUSTICE FOR ALL AMERICANS.

FURTHERMORE, IN MY MIND OUR NEXT ATTORNEY GENERAL MUST BE DEDICATED TO MAKING THE FIGHT AGAINST ILLEGAL DRUGS A TOP PRIORITY IN WORD AS WELL AS DEED, AND MUST WORK TO STRENGTHEN THE COOPERATION AMONG THE VARIOUS AGENCIES INVOLVED IN THIS FIGHT.

GOVERNOR THORNBURGH, I LOOK FORWARD TO LISTENING TO THE TESTIMONY YOU WILL OFFER TODAY AND YOUR ANSWERS TO THE QUESTIONS THE MEMBERS OF THIS COMMITTEE WILL SUBMIT TO YOU. I VERY MUCH WANT TO LEARN OF YOUR PRIORITIES, AND GAIN SOME INSIGHT INTO WHAT SORT OF ATTORNEY GENERAL YOU WILL BE. I WISH YOU WELL TODAY AND THROUGHOUT THE ENTIRE CONFIRMATION PROCESS. THANK YOU MR. CHAIRMAN.

Senator **Kennedy**. The Senator from Wyoming, Mr. Simpson.

Senator **Simpson**. Mr. Chairman, I just would ask that my remarks be entered into the record.

[The statement of Senator Simpson follows:]

STATEMENT OF SENATOR ALAN K. SIMPSON
NOMINATION OF RICHARD THORNBURGH
TO BE ATTORNEY GENERAL OF THE UNITED STATES

COMMITTEE ON THE JUDICIARY
AUGUST 5, 1988

Governor, it is so very good to see you here today. This is certainly a fine occasion for you, individually, and I must say for the Department of Justice as well. With the resignation of Attorney General Ed Meese, the President swiftly went to work in search of another qualified nominee for this most important post. President Reagan certainly met and exceeded many of the expectations which we in the Senate had for the next Attorney General when he submitted your nomination.

I must say that I personally am just delighted that you have been chosen to succeed Ed Meese and to continue with his very important work in the Department of Justice. Attorney General Meese left the Department with a strong record of accomplishments. By almost any criteria, the Department of Justice exceeded past performance in both civil and criminal matters. The statistics bear it out. I certainly believe that you will continue this fine record and that the Country will be well served through the balance of President Reagan's term by your work as Attorney General.

You and I first met under very different circumstances. We were brought together in the adversity of Three Mile Island. That was a "baptism by fire" for both you as a new Governor and for me as a freshman Senator charged with responsibilities as the ranking member on the Nuclear Regulation~~s~~ Subcommittee in the Senate. I watched you handle that very difficult situation with great wisdom and skill. Steady at the wheel. As a result, you deservedly won wide praise and I have been impressed with you work ever since.

I must also say that I am quite impressed by your other public service. You seem uniquely qualified to take over the position as Attorney General. Your private practice of law consisted of civil matters and corporate work. You then spent a long tenure in criminal law through your post as United States Attorney, Assistant Attorney General for the Criminal Division and acting Deputy Attorney General. Your experience is a rich blend of both criminal and civil matters which give you particular insight into both.

Much can be discovered about a man or a woman by what he or she does away from the shop. This seems to be especially true in your case. I note that you have given your time to a number of organizations such as the Association for Retarded Citizens of Allegheny County and the National Academy of Public Administration. You have also been on the Board of Directors of such diverse organizations as the National Organization on Disability, the Urban League of Pittsburgh and the American Civil Liberties Union of Pittsburgh. On that last point we have another point of common interest -- for I, too, was a member of the American Civil Liberties Union in my younger days -- before Skokie -- when I dropped out.

Your participation in these organizations and on these boards speaks eloquently of your interest in less fortunate members of our society. This will serve you well as Attorney General. While it is a post of enormous power and influence, it is also the opportunity to do much good for victims of crime, poverty, discrimination and disenfranchisement.

I do look forward to reviewing your testimony today. I can foresee no reason why you should not receive swift approval by this Commitee and swift confirmation on the floor. You will make an excellent Attorney General and I eagerly anticipate working with you on the issues that will face us in the coming months.

Senator SIMPSON. I would just say that I have known this man since we both came into office. We were both sworn in in January 1979 in our different capacities. Where I got to know the man under fire in every sense of the word was when I was the ranking member of the Subcommittee on Nuclear Regulation and suddenly had a call in March that we were going to Three Mile Island. I said, where is that? And, of course, I found out.

And then I met this governor, who was just in his first few weeks of office, and watched him handle that situation with the greatest of strength and ability and grace and good humor, and it was there I came to know the man and to enjoy him and to see what an extraordinary public official he is.

We are just very fortunate that he has agreed to do this. The President is very fortunate to have it occur and the Justice Department and all of us are deeply appreciative, and I wish him well. It will be a great treat to work with him once again, which has been a very special privilege for me for now 8 years.

Senator KENNEDY. The Senator from Arizona, Mr. DeConcini.

Senator DECONCINI. Mr. Chairman, thank you, and I would just ask that my statement be put in the record.

Senator KENNEDY. It will be so included.

[The statement of Senator DeConcini follows:]

PREPARED STATEMENT OF DENNIS DECONCINI

Governor Thornburgh, it is good to have you here today. I believe that there is no matter before this Congress more important than putting the Justice Department back in good working order and restoring the confidence of the American People in their top law enforcement agency. I am anxious to bring the political buffeting and the uncertainty at the Department to an immediate end and let it return to enforcing our Federal laws and protecting the rights of all Americans.

You have experience at all levels of the Department. You have been in charge of a Justice Department field office as assistant U.S. attorney in Pittsburgh, as well as serving in a high-policy and administrative position in Washington as the Assistant Attorney General for the Criminal Division. I think that it is important that you have served on these two levels of the Department, because I believe that the best experience for making policy in Washington is having to carry out policy in the field.

In addition to your varied experience in the Department, you have also been the Governor of the Commonwealth of Pennsylvania. This experience as the administrator of a large bureaucracy with many varied and different functions will stand you in good stead in administering the Justice Department.

As you know, the committee has heard different opinions as to the current situation at the Justice Department. We have heard everything from it being described as like Alice in Wonderland, to it being described as being in the best shape in its history. I am sure that the truth lies somewhere in between, but nevertheless I am concerned that there are problems in the Department both in morale and in productivity. We want to hear from you, what you intend to do to solve the problems that do exist and to return the Department to maximum efficienty. The American people deserve and expect the best that their Government can be. I want to work with you to restore the Department to that role.

Governor Thornburgh, I have heard many good things about your competence and your integrity. The one concern that I do have, and it is a recurring one with nominees to be Attorney General, is that you are by profession, a politician. As Governor of the Commonwealth of Pennsylvania, you were a partisan politician. As the chief law enforcement officer of the United States, we expect you to put partisanship aside and enforce the law objectively and fairly. I would be interested in hearing from you, your views on the appropriateness of appointing politicians to be attorneys general, and how you plan to divorce yourself from partisan politics as Attorney General.

You have been nominated to be Attorney General at an historic time for the Department. I am hopeful that you are the best person for this vital task. I can assure you all the assistance that this Senator can provide.

Senator DeConcini. Governor, welcome. We are very pleased to have you here. Many fine things have been said about you, and your reputation precedes you both as Governor and in the Justice Department and as U.S. attorney.

I hope that you will address, Governor, and if you do not I will ask you some questions—you have served in many political positions. I certainly understand and honor that and respect your success in your political positions. That is what we do for a living, and I am proud of it and I am sure you are.

However, my concern is that the Department of Justice, though the Attorney General is a political office appointed by the President, has to demonstrate, in my judgment, some bipartisanship. I do not mean just in dealing with the Democratic members of the Judiciary Committee, in particular, but in the image it projects. The Department should not be a partisan office when it comes to the enforcement of our laws.

And I hope you will address that because, to me, that certainly does not disqualify you, the fact that you have been very partisan in your career, and rightfully so, and certainly a tremendous success in it. But I hope that you can set forth how you see this office of Attorney General.

We have not always had Attorneys General who have been what I consider leaning towards bipartisan and enforcement, and yet we have had some. There have been Republicans and Democrats who have done an outstanding job, and you very well might like to address that, if you would.

Thank you, Mr. Chairman.

Senator Kennedy. We have a statement from the Majority Leader, Senator Byrd, that will be included in the record.

[The statement of Senator Byrd follows:]

STATEMENT OF SENATOR ROBERT C. BYRD, A U.S. SENATOR FROM THE STATE OF WEST VIRGINIA

AUGUST 5, 1988

MR. CHAIRMAN, I WISH TO JOIN WITH MY COLLEAGUES IN WELCOMING GOVERNOR THORNBURGH TO THESE HEARINGS.

GOVERNOR THORNBURGH, YOU HAVE BEEN NOMINATED FOR THE OFFICE OF ATTORNEY GENERAL AT A PARTICULARLY DIFFICULT TIME FOR THE DEPARTMENT OF JUSTICE. THIS COMMITTEE HEARD LAST WEEK FROM TWO FORMER OFFICIALS OF THE DEPARTMENT, WHO PAINTED A DARK PICTURE OF THE MORALE AND EFFECTIVENESS OF THE DEPARTMENT. ETHICAL QUESTIONS ABOUT THE CONDUCT OF THE ATTORNEY GENERAL HIMSELF CONTINUE TO LINGER, AND DESERVE TO BE ANSWERED.

THEREFORE, IF YOU ARE CONFIRMED, YOUR FIRST PRIORITY MUST BE TO RESTORE THE HIGHEST ETHICAL STANDARDS TO THE OFFICE OF THE ATTORNEY GENERAL SO AS TO INSPIRE THE CONFIDENCE OF THE AMERICAN PUBLIC AND THE CAREER OFFICIALS IN THE DEPARTMENT OF JUSTICE. THE DEPARTMENT HAS A PROUD TRADITION OF COMMITMENT TO THE RULE OF LAW, AND TO THE HIGHEST STANDARDS OF PERSONAL AND PROFESSIONAL

CONDUCT. THIS TRADITION HAS SERVED TO ENHANCE THE ABILITY OF THE DEPARTMENT TO SERVE THE PUBLIC IN ENFORCING OUR LAWS FAIRLY. CONFIDENCE OF THE AMERICAN PEOPLE IN THOSE WHO ENFORCE THE LAWS IS NECESSARY FOR THE EFFECTIVE ENFORCEMENT OF THOSE LAWS.

YOU COME TO THE SENATE WITH A REPUTATION FOR INTEGRITY, PROFESSIONALISM AND FAIRNESS -- QUALITIES WHICH SHOULD SERVE YOU WELL AS ATTORNEY GENERAL. YOUR BACKGROUND IN PUBLIC SERVICE AND ACADEMIC PURSUITS IS ADMIRABLE, AND YOUR PRIOR SERVICE IN THE DEPARTMENT ITSELF SHOULD BE ESPECIALLY BENEFICIAL.

I KNOW THAT THE COMMITTEE WELCOMES YOU WARMLY, BUT WILL NONETHELESS WANT TO QUESTION YOU AS TO HOW YOU WOULD TACKLE THE RESPONSIBILITIES OF ATTORNEY GENERAL. WE WILL WANT TO KNOW WHAT SPECIFIC ACTIONS YOU WILL TAKE TO RESTORE CONFIDENCE IN THE DEPARTMENT, AS WELL AS WHAT EFFORTS YOU BELIEVE SHOULD BE TAKEN WITH RESPECT TO ENFORCING AND IMPROVING LAWS RELATING TO DRUGS, PORNOGRAPHY, WHITE COLLAR CRIME, AND OTHER IMPORTANT ISSUES.

MY DUTIES AS MAJORITY LEADER WILL REQUIRE MY PRESENCE ON THE SENATE FLOOR, BUT I LOOK FORWARD TO YOUR TESTIMONY, WHICH I WILL REVIEW BEFORE ACTING ON YOUR NOMINATION.

IF YOU ARE CONFIRMED BY THE SENATE, YOU CAN BE ASSURED THAT I WILL WORK WITH YOU AND THE DEPARTMENT IN PROVIDING THE KIND OF LAW ENFORCEMENT THAT THE AMERICAN PEOPLE DESERVE.

Senator **KENNEDY**. Just before swearing you in, Governor, would you care to introduce the members of your family? You have got quite a group of them here and we are privileged to have them all here.

Mr. **THORNBURGH**. I would, Senator. I would like to introduce my wife of 25 years, Ginny Thornburgh; my oldest son, John; my second son, David, and David's wife, Rebecca, and John's wife, Sharon.

There are two other sons who are not here today, but I assure you they send their best. Our special son, Peter, is on vacation, and our youngest son, Bill, is on active duty with the U.S. Navy.

I thank you for giving me the opportunity to introduce this family which has supported me over the years.

Senator **KENNEDY**. Thank you very, very much. While you are standing, would you remain standing and raise your right hand?

Do you swear the information you give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. **THORNBURGH**. I do.

Senator **KENNEDY**. I think a good place to start off, Governor, unless you have an opening statement, would be why you want to be Attorney General, what you think you can accomplish, and perhaps the priorities that you set, should you be confirmed by the U.S. Senate?

TESTIMONY OF RICHARD L. THORNBURGH, TO BE ATTORNEY GENERAL OF THE UNITED STATES

Mr. **THORNBURGH**. No, I don't, Mr. Chairman.

Senator **KENNEDY**. I understand that you didn't, but maybe you would respond to the question.

Mr. **THORNBURGH**. I am deeply honored by the President's nomination to become the Attorney General of the United States. I have spent my entire professional career in the law, in the practice of the law, and as a Governor of a major State in the execution of the laws of that State. And I revere the law as the foundation of so many of the principles of a free society that are embodied in this great Nation of ours.

Moreover, I have a deep and abiding respect and affection for the U.S. Department of Justice, having served 6 years as a U.S. attorney in the front lines of the effort to deal with the problems of crime and criminal justice, and having had a previous responsibility within the Department of Justice to provide leadership to the Criminal Division of that Department in the administration of President Gerald Ford.

So my desire to accept the President's nomination, I hope, is understandable in terms of past experience, in terms of my commitment and appreciation of the importance of the administration of justice, and of my desire to return once again to join with colleagues, professionals within the Department of Justice, and once again assume a position of leadership.

With regard to priorities in this position, if I am confirmed, I think clearly in this Nation today those of us with law enforcement responsibilities have to regard the scourge of narcotics and dangerous drugs as public enemy number one.

Ginny and I, as I indicated, have raised four fine young men, and during this last year, as you indicated, I have had the privilege to spend a lot of time with students, the next generation of leadership in this country.

They have much to offer, these young men and women, and to the extent that their opportunities to offer leadership and fiber and character to this Nation during times of stress is threatened by the scourge of narcotics and dangerous drugs, we as a nation are the poorer, and we as devotees of the American way of life and the values and principles that this Nation stands for shirk our duty if we do not exert ourselves to the utmost in dealing with the threat that is posed by trafficking in these illegal substances.

Therefore, I would make within the Department of Justice my number one priority ensuring that in every constitutional way the resources of the Department of Justice in the law enforcement field are devoted to cracking down on those who conduct the business of trafficking in narcotics and dangerous drugs, many involved in organized crime activities, and in cooperating with other agencies and individuals within the Federal Government who share responsibilities not only in the supply side having to do with the trafficking in these substances, but on the demand side; that is, to carry a message to particularly young people of the threat involved to their health, well-being, and our way of life in the use of narcotics and dangerous drugs; to enhance the educational process and its participation in carrying that message in our schools at all levels; to work with those engaged in the rehabilitation and treatment of persons addicted to narcotics and dangerous drugs; and to try to rekindle an ethic within this United States that recognizes that whatever temporary highs may occur through the use of these substances pale by their comparison to the highs that can be forthcoming through careers of accomplishment and contribution to this great Nation in a wide variety of ways.

Drugs, Mr. Chairman, have to be the overall, preeminent concern of a law enforcement agency in this day and age. With my background and experience as a prosecutor, one who made that priority an important one during 8 years as Governor of the Commonwealth of Pennsylvania, and with what I determine to be, even a short period of time, a bipartisan commitment by you and your colleagues to fashioning the best possible programs and devoting the maximum amount of resources to dealing with this problem, an assurance that this effort can go forward in a meaningful way, I would identify that as the prime priority.

Other priorities, I think, that have to be reiterated are the traditional concern of the Department of Justice for the problem of organized crime and racketeering, an effort that since the passage of the Travel Acts during the time that your late brother was Attorney General, continuing through the passage of the Organized Crime Control Act of 1970 when I was a U.S. attorney, and through the efforts that have been devoted by the Department of Justice and U.S. attorneys since then to deal with threats to our well-being that are of the most subversive nature because they are 365-day-a-year illicit business operations that more often than not cross State lines and indeed have an international aspect to them and will require our attention.

Third, I would mention the Federal emerging role in dealing with the problem of public corruption and with the standards and values by which we are governed by elected and appointed officials at all levels of government, Federal, State, and local.

My experience in that area is lengthy. The establishment of the Public Integrity Section within the Criminal Division of the Department of Justice during my previous tenure there was one of my proudest accomplishments, and I would assure members of this committee and your colleagues that there would be an aggressive, continuing effort to deal with the problem of corruption at all levels of government and throughout this Nation to ensure that government is a term of respect rather than skepticism or, worse, cynicism or derision during the time that I am privileged to serve as Attorney General.

There are, of course, Mr. Chairman, other priorities and other areas that I am sure can be identified. Others may be suggested by members of this committee or members of the Congress, but I think those three have to be the principal, substantive areas where I would hope to assume a leadership role.

Senator KENNEDY. Well, I thank you for your response. I think it would be very difficult to find priorities that are higher on the minds of the people of this country. We certainly would wish you well, should you be confirmed.

Let me ask some questions that have been raised over the course of your own experience in public life so that we have an opportunity to have these responses on the record for our committee. I know you have responded to some of these issues previously in various reports and in other forums, but I think it is important that we have your answer for the benefit of our colleagues not only on the committee and in the Senate, but also in the country.

In light of the ethical and legal problems which have plagued Mr. Meese, it is especially important that those who are being asked to restore public confidence in the Justice Department are themselves particularly sensitive to ethical matters.

First of all, what ethical standards do you think are appropriate for an Attorney General?

Mr. THORNBURGH. I think the Attorney General, as the head of the Department of Justice, as the symbol of the values that are incorporated within our constitutional system, must adhere, and I would pledge and hope to adhere, to only the highest ethical standards in the conduct of that office.

Senator KENNEDY. We have witnessed a situation in which Attorney General Meese was involved in a number of probable violations of the law and conflicts of interest. We want to gather from you responses to allegations in the news media that as Governor of Pennsylvania you gave valuable no-bid contracts to political cronies and campaign fund-raisers.

Do you want to make any comment about that?

Mr. THORNBURGH. Well, as Governor of Pennsylvania, I supervised a work force of some 80,000 people, about 15,000 less when I left office than when I took office, and that enterprise on a daily basis was engaged in contracting for a wide variety of goods and services.

In some cases, as dictated by law, those were on a competitive bidding basis. In others, particularly in providing professional services, the law provides that they are not necessarily the subject of competitive bidding.

Senator KENNEDY. Let me——

Mr. THORNBURGH. In those—excuse me.

Senator KENNEDY. Let me just tighten it up a little bit. The allegations include a no-bid job to Merrill Lynch to help sell $807 million in Pennsylvania Turnpike Commission bonds, thus earning the company an estimated $1.5 million underwriting fee. The next year, you were put on the board of Merrill Lynch, at $35,000 a year.

Mr. THORNBURGH. To the extent that your question suggests any connection between the two events, I think it is important for me to first of all indicate that I was approached by the chairman and chief executive officer of Merrill Lynch in, to the best of my recollection, November 1977, which was about 10 months after I had left office as Governor, and asked if I would consider becoming a member of their board of directors.

I was interviewed by the nominating committee of that board, which recommended my election, an election which I believe took place in December 1977. At no time during my conversations with the chairman, the nomination committee, with my fellow directors of Merrill Lynch, was there any discussion whatsoever of any business that Merrill Lynch had done with the Commonwealth of Pennsylvania during the time that I was Governor.

Moreover, I think it is important to note that during the period of time that I served as Governor, the Commonwealth from time to time went to the market for borrowings, utilizing a large number of firms in the underwriting business in an attempt to in each case spread the business around, in most instances trying to use Pennsylvania firms because of the fact that that would have a positive impact on our economy.

My understanding is that Merrill Lynch participated in several of those offerings, understandably, because they are the largest retail securities operation in the Nation. But needless to say, at no time was I involved directly in any of those relationships. Those were decisions made by the people in our financial operation.

And perhaps of more importance, at no time was any discussion had about any future status that I might have as a director of Merrill Lynch, a position that I accepted under the circumstances that I outlined and which was raised for the first time with me some 10 months after I left office.

Senator KENNEDY. Just to clarify the date, that is 1987, is that correct?

Mr. THORNBURGH. Yes. Did I throw myself back a decade?

Senator KENNEDY. Yes.

Mr. THORNBURGH. Time flies.

Senator KENNEDY. Bruce Kaufman's firm collected $923,000 for legal work involving the Pittsburgh Convention Center, and Kaufman was a substantial contributor to the Thornburgh 1982 reelection campaign. Is there anything you want to tell us about that?

Mr. THORNBURGH. Yes. Bruce Kaufman is one of the preeminent lawyers in Pennsylvania. He is a partner in the firm that was originally founded by former Democratic mayor of Philadelphia, Richardson Dilworth.

His firm was engaged to handle a particularly complicated piece of litigation that involved the Convention Center in Pittsburgh, PA. I understand they effected a favorable result in that case, and I am not surprised that they earned a substantial fee for that.

Again, the fee was in no way related to any contribution made to my campaign by Mr. Kaufman or any of his partners. Lawyers from many firms in Pennsylvania contributed to my campaign, as they did to those of my opponents, and to candidates from both major parties during elections on a continuing basis.

Ironically, the present Democratic Governor of Pennsylvania, Robert Casey, was a partner of Mr. Kaufman's at the time, and I think it is unlikely that I would have been anxious to contribute to his well-being at the time.

Senator KENNEDY. Let me go to another news report that alleges that you used $729 million in State lottery revenues between 1984 and 1987 to balance the State budget, leaving a $400 million deficit in the lottery fund which, by law, was earmarked for senior citizens programs. What is your response to that?

Mr. THORNBURGH. I haven't the slightest idea what that report relates to. Our lottery fund in Pennsylvania is one of the most effective and successful lotteries in the country, operating at a very small margin of cost to the Commonwealth.

It has been effectively managed. It produces revenues on the order of—or gross revenues on the order when I left office of about $1,200,000,000 a year and, by law, is directed exclusively to funding programs for senior citizens, disadvantaged elderly residents of the State, and persons with handicaps and disabilities.

Senator KENNEDY. I think the suggestion is that you moved some of the money from the lottery to balance the State budget. I understand from your answer that that is not so.

Mr. THORNBURGH. That is not so because, by law, the funds from the lottery can only be used to fund programs for senior citizens and handicapped and disabled persons. There was a constant examination of how to provide those services in view of the fact that the revenues for the lottery increased dramatically during the time that I was in office.

New programs were adopted; funds were shifted from one area to another, but always to provide services for senior citizens and disabled and handicapped persons, as the law provided.

Senator KENNEDY. But would it be reasonable to assume that there may have been a reduction of some program that had been funded at the State level for seniors or transferred into the lottery program? I mean, did you move some of the funding of senior citizens programs into the lottery program revenues?

Mr. THORNBURGH. Well, the lottery revenues were devoted a hundred cents on the dollar to senior citizens programs.

Senator KENNEDY. And they always were?

Mr. THORNBURGH. New programs were added and new objects of expenditure were adopted from time to time, but it was never a method to detract from what the statutory direction was.

Senator KENNEDY. And your response, I think, is very clear that all of those funds were used for senior citizens programs?

Mr. **Thornburgh**. Absolutely, senior citizen or handicapped or disabled, and a program that we are very proud of, the most generous program in the country on a per capita basis for our senior citizens.

Senator **Kennedy**. Let me just go into two other areas and then I will yield to my colleague.

Anyone who has been a lawyer in public and private life for as long as you have is going to have many friends, and in light of our experience with Attorney General Meese, will you assure us that you will be especially sensitive to providing equal access to the Attorney General and to avoid actions which create an appearance of impropriety or special treatment for certain individuals?

Mr. **Thornburgh**. Yes, I think I can make that assurance, Senator, based on my previous experience particularly within the Department of Justice, where one has to be hyper-sensitive to appearances of impropriety as well as impropriety itself. And, believe me, over 20 years in public life, I think I have learned to be hyper-sensitive in that regard and would hope I could satisfy your standards in that respect.

Senator **Kennedy**. The Office of Professional Responsibility in the Justice Department has begun an investigation into Attorney General Meese's ethics problems. Will you assure the committee that you will do everything in your power to assist the office in the prompt completion of its investigation, and will you assure us, if you are Attorney General at the time of the completion of the report, that you will permit the report to be released to the public?

Mr. **Thornburgh**. Yes, I can, Mr. Chairman, with one observation that obviously the release of any such report, to the extent that it would conflict with restrictions on the release of information such as contained in Rule 6(c) of the Federal Criminal Rules of Procedure regarding grand jury proceedings, might create a problem. But I have no desire to obstruct or to conceal the progress of the investigation or the termination of it and my own review of it.

Senator **Kennedy**. Fine.

I would recognize the Senator from South Carolina.

Senator **Thurmond**. Thank you, Mr. Chairman.

Speaking about the Office of Professional Responsibility, as I understand it, that is supposed to be an independent office and you shouldn't interfere with that in anything they do, should you?

Mr. **Thornburgh**. No, I shouldn't, Senator.

Senator **Thurmond**. Or try to influence them in any way?

Mr. **Thornburgh**. No, indeed.

Senator **Thurmond**. So I wanted to just make that clear that you would not attempt to take any part because it is an independent agency and they should do what they think is proper and not try to involve you in it.

Governor Thornburgh, as I commented in my opening statement, there has been a great deal of discussion recently regarding the role of the Attorney General. I would like to ask you this question: Will you perform your duties in an independent and uncompromising manner, and will you take whatever action is necessary to maintain the integrity of the office of Attorney General?

Mr. **Thornburgh**. To the very best of my ability, Senator Thurmond.

Senator **THURMOND**. Governor Thornburgh, would you tell the Committee what procedures you will follow in determining any potential conflicts of interest and how you intend to resolve them?

Mr. **THORNBURGH**. Conflicts of interest have to be dealt with, I believe, Senator, on a case-by-case basis, and often fine judgments are required as to whether or not action must be taken to deal with the question of actual or perceived conflict of interest.

I have committed in my response to the questions asked by this committee previously to making such a case-by-case determination, and in recusing myself from any matter that comes before the Department of Justice that would involve a conflict of interest.

I am very sensitive to that requirement and I can assure you that I will not hesitate to take whatever action is appropriate to prevent any conflict of interest in the fulfillment of my responsibilities.

Senator **THURMOND**. Governor, speak in your machine so we can hear you, and don't let your voice drop, we need to hear you.

Mr. **THORNBURGH**. Excuse me?

Senator **THURMOND**. Speak in the machine up closer so we can hear you, and don't let your voice drop.

Mr. **THORNBURGH**. I am not often asked to speak louder.

Senator **THURMOND**. There is a lot of press here and people back there. I think they would be interested in your answers.

Mr. **THORNBURGH**. Thank you.

Senator **THURMOND**. Governor Thornburgh, in 1986 Congress passed a major drug bill to address the massive illegal drug problem. This bill was an important step in the fight against illicit drugs. However, drugs continue to be a menace to society.

I believe that we will pass a drug bill before the end of this Congress which will focus on decreasing the demand for illegal drugs and enhancing the penalties for drug traffickers, as well as increasing the capabilities of law enforcement.

What are your recommendations for addressing this issue, without going into too much detail, this issue of such national importance?

Mr. **THORNBURGH**. Senator Thurmond, I have already indicated my agreement with your analysis that the drug problem has to be a major priority of the Department of Justice, and indeed of the entire governmental structure in all branches of government.

I think that there are several components, without going into too great detail, that have to be addressed consistently. One is the commitment of sufficient manpower, womanpower, and other resources to the enforcement effort within a system where there is an appropriate deterrent capacity built into the law by having the certainty of punishment and appropriate sentencing structures for those engaged in drug trafficking.

There has to be an aggressive and effective use of Federal grand juries to give those of us in law enforcement a picture of the business structure of the trafficking of organized crime and dealing with narcotics and dangerous drugs.

There has to be a strong commitment from leaders in government to the educational capacity to carry forth the message particularly to young people of the harmful nature of drug use.

There has to be tight cooperation among all law enforcement agencies and with agencies such as the Department of Defense and the Department of State with regard to the international aspects of drug trafficking. And in that connection, I am informed that the President will ask me to serve as chairman of the Drug Policy Board, which is the coordinating mechanism, as you know, within the executive branch for seeing that that type of cooperation and integrated approach takes place.

It is a job that is going to demand the best efforts of all of us involved both in law enforcement and in the educational, treatment, and rehabilitation side. It is a job that I am eager and anxious to get on with, and I particularly look forward to working with Members of the Congress on fashioning legislative responses that will supplement and, indeed, enhance the capability of the Department of Justice to do its share.

Senator THURMOND. Governor Thornburgh, combatting organized crime and white collar crime continue to be priorities at every level of the law enforcement community. Do you feel that there are sufficient resources at both the State and Federal levels to deal with these issues and, if not, would you hesitate to ask for more funds?

Mr. THORNBURGH. Let me answer that by saying, Senator, that at this time, without having been in the Department and had my hands on the process and been able to make an assessment, I can't give you an answer as to the current status of the resources available.

I will say this, that I won't hesitate ever to ask for the resources that I think are necessary to do the job or to make such deployments and reallocations of existing resources to enable us to have a maximum impact on priority areas that we identify.

Senator THURMOND. My question was probably premature because you haven't gotten in office yet, haven't had a chance to appraise the situation yet.

Mr. THORNBURGH. I hope to be able to do so.

Senator THURMOND. Governor Thornburgh, I have been a longtime proponent of the joint multi-State and local organized crime and narcotics projects known as the Regional Information Sharing Systems, RISS. I believe they perform a valuable service to the State and local law enforcement agencies that utilize them.

The Regional Organized Crime Information Center with which I am familiar does an outstanding job in assisting local law enforcement agencies. I feel it would be beneficial to you as the new Attorney General to meet with the representatives of the RISS projects. Would you be receptive to such a meeting in the near future so you could discuss the matters with them?

Mr. THORNBURGH. I certainly would, Senator, because in my experience one of the most effective ways to multiply the effect of existing resources and its impact on particularly organized crime is regional interstate and joint federal, State and local cooperation.

It doesn't accomplish the task if everybody isn't playing on the same team and proceeding from the same premises, and in my experience as a prosecutor and administrator that kind of regional cooperation is a must for effective crime-fighting and I would hope we could arrange such a meeting.

Senator THURMOND. I will try to have my staff coordinate a meeting with you, if that is agreeable.

Mr. THORNBURGH. Thank you.

Senator THURMOND. Governor Thornburgh, as you know, the production of child pornography and obscenity has become widespread. Every night when I go home, I pick out of my mailbox cards, pictures of little children, more females than males, that have been abducted or are missing. Now, there is some purpose in that, and it is a terrible thing.

Production of this material has become a big business which reaps huge profits at the expense of innocent children. In order to address this problem, I introduced legislation along with the distinguished Senator from Arizona, Senator DeConcini, to strengthen the enforcement of our child pornography laws. Currently, 42 of our colleagues have joined us as cosponsors.

Governor Thornburgh, in your opinion, what steps should be taken with regard to eliminating this insidious material from our society?

Mr. THORNBURGH. I must admit, Senator Thurmond, I am not familiar with the legislation, but will certainly look forward to acquainting myself with it. But as a parent and as a law enforcement official, I share your outrage at this type of activity, an activity which we addressed during the time that I was Governor of Pennsylvania by equipping our State prosecutors with new tools to deal particularly with child pornography, and, during the time that I served as U.S. attorney, obtaining convictions of major pornographers who were engaged in interstate trafficking in this heinous activity.

I stand second to none in my commitment to see that particularly as it impacts on young people, this problem is addressed, and addressed in a way that is reflective of sound law enforcement and constitutional practices that can raise the ante through a deterrent capability for those who participate in this kind of business.

Senator THURMOND. I hope the Congress will not delay in taking action, and I hope the executive branch will follow through.

Governor Thornburgh, it has been estimated by the Office of Management and Budget that the Federal Government has approximately $68 billion in delinquent debts. Under current law, debts owed to the Federal Government must be collected under the State law in which the debtor is found. These laws vary from State to State.

On December 18, 1987, I introduced a bill, along with Senator Biden and Senator Grassley, to provide uniform collection procedures for the collection of Federal debts. This legislation has the support—in fact, it was written by the U.S. attorneys; all 94 U.S. attorneys across the country who perform the majority of debt collection litigation on behalf of the Federal Government are in favor of this bill. They endorse it highly. Yet, I am having difficulty getting it out of this committee.

Why should there be any delay? There are billions of dollars to be collected that are owing to the Federal Government. I hope we can get this bill out. Do you have any recommendations that might be used to improve the collection of debts other than this bill I mentioned?

Mr. THORNBURGH. Well, I have a very high opinion, as you might expect, of the views of the U.S. attorneys, and having unanimous support for your suggested legislation counts heavily when it comes from those who are on the front lines, not only with respect to law enforcement, but as is often overlooked, on the civil side of seeing to the government's activities.

I certainly would hope to look at that legislation and examine it from the point of view of the Department and give you a sense of what suggestions to make.

Senator THURMOND. I think my time is up. I just want to congratulate you upon your appointment by the President, and commend you that you have the support of both your able Senators from Pennsylvania and the distinguished Congressman from there. And I anticipate you will be confirmed shortly, and I wish you well. Any way I can cooperate, I will be glad to do it.

Mr. THORNBURGH. Thank you, Senator.

Senator KENNEDY. Thank you, Senator Thurmond.

We will now go to a regular 10-minute rule. We will recognize the Senator from Ohio, Mr. Metzenbaum.

Senator METZENBAUM. Mr. Thornburgh, on Tuesday the Subcommittee on the Constitution heard testimony from law enforcement experts, including the Bureau of Alcohol, Tobacco, and Firearms, the police chiefs of Kansas City and Atlanta, representatives of the Philadelphia Police Department, including the commissioner, the Law Enforcement Steering Committee, and Director of the Mid-Atlantic Great Lakes Law Enforcement Network.

Each of these police experts testified that the Nation's most violent and deadly drug traffickers are arming themselves with semiautomatic handguns capable of shooting a hundred rounds a minute. Many of these guns are obtained through illegal sales from legitimate gun dealers.

According to these experts, a national minimum waiting period for handgun purchases is crucial to the war on drugs. You and I discussed that subject when you were in my office, and my understanding of our conversation was that you indicated that you would support a 1-week waiting period, provided that there was an alternative for States to make the period longer if they wanted to. Am I correct in that?

Mr. THORNBURGH. We have a waiting period in Pennsylvania, as I told you, Senator, and I think it is an appropriate tool to utilize in giving law enforcement agencies the opportunity to maximize their chances of keeping these weapons out of the hands of individuals who show a propensity toward violent crime.

And I certainly expressed my support at the time for an appropriate waiting period that recognized the State's interest in this area as well.

Senator METZENBAUM. As I understand the position Mr. Christensen stated and as I understand the President's public statement, it would be a minimum of 1 week and if States wanted to go longer that that would be agreeable.

Mr. THORNBURGH. Without having looked at it in detail, I don't want to get into the days or hours, but the concept of a waiting period, as I indicated to you, is one that I find useful and one that, through joint Federal-State cooperation, can have a deterrent effect on those who would use handguns, in particular.

Senator **Metzenbaum**. You say joint State-Federal cooperation, but what I am really asking you is whether you would support—whether the Justice Department would take a formal position and issue a letter supporting at least a 1-week waiting period, with an option to go longer on the parts of the States.

Mr. **Thornburgh**. As I indicated, in concept, I find that a useful tool, but, again, without having had a chance to look in detail at the legislation, I would want to defer until I had a chance to do that.

Senator **Metzenbaum**. But you would support the concept of a 1-week waiting period?

Mr. **Thornburgh**. Yes, yes.

Senator **Metzenbaum**. Now, frankly, the Washington lobbyists for the National Rifle Association have been waging a vicious and misleading campaign against a national waiting period. As I said to the NRA representative on Tuesday, I think these NRA lobbyists are disserving their membership, as well as the Congress.

When we had a similar problem in working out legislation to ban undetectable firearms, a piece of legislation Senator Strom Thurmond and I authored, the Justice Department stepped in to work in partnership with the law enforcement community and the Congress to craft a bill that will soon become law.

If you are confirmed as Attorney General, would you be willing to provide the leadership and work with the law enforcement community and the Congress to help us pass this important safety legislation yet this year?

Mr. **Thornburgh**. Well, again, without commenting on specific legislation, I think a very important role of the Attorney General is to act as in a leadership role with all agencies and organizations that are interested in sound law enforcement, and if that occasion arises I wouldn't hesitate to fulfill that role.

Senator **Metzenbaum**. Mr. Thornburgh, it has come to my attention—I had heard it before, but I think that we ought to give you an opportunity to respond concerning the Wall Street Journal article this morning which raises some rather thorny issues.

At the risk of being boring, but I don't know how else to do it except to read some of these paragraphs. The story reads:

> Richard Thornburgh, President Reagan's nominee for Attorney General, participated in a decision to withhold from Congress portions of a 1975 Justice Department report that detailed drug trafficking by high-ranking Panamanian officials and revealed corruption inside the U.S. Drug Enforcement Administration.
>
> Internal Justice Department documents show that the report, among other things, focused on "the narcotic activity involving military authorities" in Panama and a purported flop by U.S. agents more than a decade ago to assassinate General Manuel Noriega, the current Panamanian strongman.
>
> The documents also indicate that Mr. Thornburgh, while he served as head of the Department's Criminal Division, attended a meeting where "it was decided that we should continue to resist disclosing to Congress certain parts of the report."

The article goes on to recite:

> But the most provocative questions relate to Mr. Thornburgh's role in informing Congress about the substance of the report. A March 1976 memo recounts a decision discussed at a session attended by Mr. Thornburgh, then Attorney General Edward Levi, and other senior Justice Department officials, to keep from lawmakers information "being reviewed for possible criminal administrative action."

It goes on to state:

> A 34-item list of materials, which is labeled "Secret and Top Secret" and is believed to be part of the report's supporting evidence, includes a CIA memo discussing the "involvement [of the] family of General Omar Torrijos in narcotic trafficking" and letter detailing the "significance of Republic of Panama international narc. trafficking." General Torrijos was the leader of Panama when the report was written.
>
> Another document on the list is a paper concerning the alleged plot against General Noriega, who was a top aide to General Torrijos in the mid-1970s. The paper analyzes "options with respect to immobilization and/or neutralization of Noriega." General Noriega was indicted earlier by two U.S. grand juries on drug trafficking charges.
>
> The main thrust of the report was to catalog wrongdoing by drug agency personnel, ranging from cheating on travel vouchers and dealing in stolen property to "arranging burglaries and holdups" and promoting one official who had ties to known underworld figures.

That is a rather disturbing article and I think you ought to be given an opportunity to respond to it.

Mr. THORNBURGH. Well, I have to ask your indulgence, Senator Metzenbaum, in one respect. This relates to events that occurred some 12 years ago and I have not had any access to the files in that regard.

My best recollection I can state for you with some degree of confidence, however. This report was commissioned and completed prior to the time that I assumed office as Assistant Attorney General. My recollection is that it was commissioned by Attorney General Levi and Deputy Attorney General Tyler based on some allegations of wrongdoing within the Drug Enforcement Administration.

It was carried out by attorneys of the Criminal Division on detached assignment to the Attorney General's office. My recollection is that the report was thereafter referred to the Criminal Division to determine whether there were any prosecutable offenses involved in the events that were set forth in the report.

And, again, my recollection is that staff attorneys of the Criminal Division made such a review and determined that there was at that time no prosecutable Federal offense.

Senator METZENBAUM. I think that is the case. I think the facts are at that time you had closed the case. The question is why did you withhold the material from Congress and, second, did you have any information at that time that Panamanian officials were involved in illegal drug trafficking?

Really, the question is why you participated in a meeting where it was decided that "we should continue to resist disclosing to Congress certain parts of the report." That concerns us because obviously you are going to be in a position where we may want such information in the future.

I well understand your hazy recollection of what occurred some years ago, but I think that it is important before we conclude this hearing that we know why Dick Thornburgh did not make that information available to Congress because that is a constant running battle we have had over the past 8 years.

Mr. THORNBURGH. Well, let me again, based on my recollection, correct the record, if I might, Senator. Any decision with respect to what was to be forthcoming to the Congress would be the decision of the Attorney General.

My role, as I recollect, in any deliberation on that score would be merely to indicate whether or not there were ongoing investigations into alleged criminal conduct which would occasion a decision to withhold that information.

At that time, and I suspect even today, there is some degree of sensitivity about making available to the Congress information in files that respect ongoing criminal investigations, and if the Attorney General made——

Senator METZENBAUM. But you are missing my point; you are missing my point, Mr. Thornburgh. The criminal investigation had been closed. It was decided not to go forward with any matter, and the report itself having to do with the Defeo report says as follows:

> As we discussed at yesterday's meeting of the Attorney General, the Deputy Attorney General, Assistant Attorney General Thornburgh, Togo West, and myself, it was decided that we should continue to resist disclosing to Congress any portion of the Defeo report being reviewed for possible criminal or administrative action.

Mr. THORNBURGH. Yes, that is right.

Senator METZENBAUM. Let me just read one more:

> Mr. Thornburgh indicated that the Criminal Division has except for a closing memorandum on certain aspects of the Permuto matter, now completed its review and does not contemplate further action.

So my question is the criminal matter is behind us; now, why did you decide not to make available to Congress that information? There is another portion of the article that Senator DeConcini may want to get into, but it indicates in that same article that he has been trying for years to—"five years later, in fact, Senator DeConcini was still complaining that the Justice Department hadn't given him the report and documents dealing with other investigations, maintaining that the agency's resistance amounted to holding the American people in contempt."

So I think that this issue does have major concern for us. I think that it is important that you refresh your recollection. I think it is important that before we are asked to vote on this matter that we have a more full answer as to your involvement.

Mr. THORNBURGH. Well, let me say this. I cannot obviously address what reasons the Carter administration would have had for failing to be forthcoming to any request made by Senator DeConcini. Nor can I speak with any assurance as to why Attorney General Levi may have made a decision to withhold information in the time that I was serving as Assistant Attorney General.

I made no such decision. It was not my province to make that kind of decision.

Senator METZENBAUM. It says that you did.

Mr. THORNBURGH. I understood that if there was an ongoing criminal investigation, as is indicated from the newspaper story, that as a matter of procedure that information would be withheld.

Senator METZENBAUM. It says you did make that decision. It says you were one of four. "It was decided that we should continue to resist disclosing to Congress any portion of the Defeo report being reviewed," and I think that is a——

Mr. THORNBURGH. Well, that sounds like the editorial "we," Senator, because the Attorney General makes those decisions, not the head of the Criminal Division.

Senator METZENBAUM. Well, Mr. Chairman, my time has expired, but I have some continuing concerns about this subject and I think we possibly may want to return to it.

Senator KENNEDY. Fine.

The Senator from Utah.

Senator HATCH. Well, thank you, Mr. Chairman.

Dick, let me pick up where Senator Metzenbaum left off. The Defeo report surfaced in an investigation Senator DeConcini and I were conducting up here. A person in Pittsburgh said that he could get that report and he brought a few sheets in, but it wasn't the full Defeo report.

I am not quite sure what happened after that, where those sheets are, but I know that I have got them—I think that I have got them somewhere in storage. But the important thing is that the Defeo report—at least the contemporary importance of it is that we have all of this problem down in Panama today, and there is much concern about just how much prior administrations really knew about drug trafficking by both Torrijos and Noriega and whether there was knowledge withheld from the Congress with regard to that trafficking at crucial times during various crucial debates up here.

There may be some other reasons for that report to be investigated by Congress, but what I would like to ask you to do—it seems to me it is almost 10 years now; well, it is almost 13 years since you had anything to do with the Defeo report.

What I am asking you to do as the new Attorney General is to make that report available to us up here so that we can look into it. I understand if there is some mosaic that might disclose informant testimony or something like that, there may be some considerations you will have to make on that, but I would like to see the report once and for all brought up here.

Mr. THORNBURGH. So would I. I have not ever read the report, Senator. It was——

Senator HATCH. I understand, but you are going to be in a position where——

Mr. THORNBURGH. Surely.

Senator HATCH [continuing]. You can get it to us, and so I am asking you, will you be willing to get that report to us?

Mr. THORNBURGH. I will make a search of the files for the report and, subject to the conditions that you have attached, obviously make it available in any appropriate manner.

Senator HATCH. Well, we all understand those conditions, and what I would like is to, in good faith, just have the report, and if there are some conditions, at least list to us what they are.

Mr. THORNBURGH. Sure.

Senator HATCH. And if we could have that, that would go a long way toward resolving some of the questions that I know Senator DeConcini and I have had through all these years concerning that particular report. I agree with you; it was the Attorney General's province. I don't know what really happened back then. It is just important.

Let me go to some other things that I think are important. Few responsibilities of the Attorney General are more important than selecting qualified judicial candidates. These individuals continue to serve long after the administration has appointed them and long after the administration that has appointed them has departed. So it is a very important aspect.

These individuals have to have integrity, understanding of the law, humility demonstrated by their willingness to interpret rather than make the law, at least as far as I am concerned.

I think President Reagan has an exemplary record in this regard. Are you willing to keep perpetuating that record, although it will be difficult to get more judicial nominations through between now and the end of this year?

Mr. THORNBURGH. You will appreciate this, I think, Senator, being a former Pittsburgher. We have had a football coach of the Pittsburgh Steelers for many years who has brought four Super Bowl championships home to your and my home town.

And every time the draft comes around for college football players and he is asked what he is looking for in the way of defensive ends or defensive backfield or offense line, or whatever, he always responds—and I am speaking of Chuck Noll—he always looks for the best athlete available.

And I think in many ways the process of judicial selection in which I was intimately involved as a Governor during 8 years partakes of the same kind of exercise. You look for the best man or woman available who has the kind of characteristics that make for good judges, who have the commitment to the judicial process that is important, qualities of restraint and qualities of respect for the areas within which they act, and who share your philosophy with regard to how judges should decide cases. That is a very, very subjective process.

Senator HATCH. Yes, it is.

Mr. THORNBURGH. And I hope if I have the opportunity to recommend to the President men and women to serve on the bench that I can adhere to that kind of standard.

Senator HATCH. A few months ago we had a hearing where the administration was asked to nominate more qualified women to top judicial posts. In that regard, I would just point out that President Reagan appointed the first woman to the U.S. Supreme Court.

In any event, the administration appointed almost immediately thereafter two highly qualified women to the circuit courts. And, of course, the next thing closest to the Supreme Court happens to be those circuit courts.

Now, will you do everything in your power to get these two highly qualified women through the Senate?

Mr. THORNBURGH. I certainly share that commitment. During the time that I served as Governor, we appointed a record number of women to serve in judicial posts in Pennsylvania, and I am sensitive to the need to recognize the contributions that they can make, and would look forward to working with members of this committee to ensure that that is the case within the Federal system.

Senator HATCH. One further point. I have heard repeatedly that the Republicans held up the judicial nominations in 1980 at the end of President Carter's first term, and that any current delay, some have suggested, is merely a fair turnabout.

But, in fact, I checked the record and I learned that only 15 judges remained confirmed at the end of that particular session of

President Carter's term in 1980, and those 15 had all been appointed within 5 weeks prior to the end of our session.

I think many agreed that this was simply not enough time to hold the necessary hearings and process those judges, so I don't think there was any delay in 1980. In fact, one circuit judge, in particular, who I strongly support, and supported then and think has done a great job today, was approved 9 days after appointment by President Carter, and I might add after the Republicans had already learned that they had taken control of the Senate.

So we are concerned about some of these things and we are going to need aggressive efforts on your part to get as many of these judges through as we can between now and the end of the year, because the courts are just inundated in this country. Part of that is because Congress has created so much legislation that is open-ended that it is a litigation bonanza throughout this country.

We have had one, in particular, that showed up in the Washington Post today. The so-called plant closing legislation, which everybody thinks is such a great political tool for one party, has just been called by an article in the Washington Post a bonanza for attorneys because it is going to lead to a lot of litigation and a lot of work for business attorneys who are going to have to try and interpret all the open-ended problems that I pointed out on the floor of the Senate, but are real problems that now exist as a result of the enactment and passage of that particular legislation.

So we are going to have to get these judges on the courts and I would like to see, you know, continued aggressive work down there at the Justice Department. I, knowing you, feel that you will do that.

Mr. THORNBURGH. May I just observe, Senator, that in the law enforcement community I spoke earlier of the need to maximize the commitment of resources. Oftentimes, that is thought of in terms of prosecutors and investigators, but, in fact, if we don't have a sufficient number of judges on the bench to hear these cases, then delay ensues and the criminal justice process loses another bit of its credibility.

So from that point of view, I agree with you, it is important to fill existing vacancies, and we will hope to be able to work with you in that regard.

Senator HATCH. Well, thank you, and we look forward to working with you up here. I think both Democrats and Republicans have respect for you and we look forward to working together, and anything we can do to help, we will be glad to lend a helping hand.

Thanks, Mr. Chairman.

Senator KENNEDY. You just can't let plant closing go, can you, Orrin? That was Judge Breyer in the first circuit.

Senator HATCH. And he is a great judge.

Senator KENNEDY. The Senator from Arizona.

Senator DECONCINI. Thank you, Mr. Chairman.

Governor, just to follow up on what Senator Hatch and Senator Metzenbaum touched on, the so-called Defeo report, I just want to get it on the record. You are willing to share that with us, subject to what conditions?

Mr. THORNBURGH. Well, in any case, I would not want to look at any document that is delivered to anyone without having reviewed it myself to determine whether there are degrees of sensitivity that might trigger some safeguard.

Senator DECONCINI. Well, on that subject——

Mr. THORNBURGH. I am not trying to hedge. I am just trying to——

Senator DECONCINI. I understand. On that subject, what troubles me is that it is a long time past; statutes of limitations have run.

Mr. THORNBURGH. Yes.

Senator DECONCINI. So the fact that there may be a concern as to prosecutorial use of it, that is one standard. The other standard is some of it is classified as top secret.

Mr. THORNBURGH. Right.

Senator DECONCINI. And, of course, that is a judgment that will be in your purview, and I think we need and have a right to know what is in that report, if that is the question. As to prosecutorial, I understand that is a different standard. So that is what I hope you will consider.

I don't know that anybody is going to do anything with the report. If it is classified, we can't, even if it is very damning, but it might not be. I just don't know. There is some indication that there was no criminal activity. Then there is an indication in the report Senator Metzenbaum has that leaves a question.

Quite frankly, I gave up, as you can tell. A long time has gone by. I beat the Carter administration up on it, Senator Hatch and I did. We even got authority from this committee to issue subpoenas from the committee. We did. We didn't get them. We tried to take them to court and enough time went by and the Carter administration went out, and so it is very discouraging when we have that kind of attitude with the Justice Department. So I appreciate sincerely—and, obviously, if it is top secret and very classified, it has to be among the members and we have to be held responsible if we abuse that.

Now, Governor, as you know, Senator Hatch and I have been involved for many years in attempting to discover if an individual by the name of Jack Nard has received fair handling in Justice at the hands of the Federal criminal justice system both as a defendant and a complainant.

I have spent a lot of time with this individual, and some of it really concerns me and some of it, I am not sure about, and I have told him that. The basis for Nard's complaint is that he could not get the Justice Department and its representatives to properly investigate his allegations of false and prejudiced testimony rendered in a civil suit he was involved in.

A grand jury was convened in Iowa to look into this allegation in the early 1970s. A report developed by Senator Hatch and me in 1981 found that the conduct of these grand juries in Iowa by the U.S. attorney was less than enthusiastic.

In 1972, the U.S. attorney in Iowa visited you in Washington and discussed the grand jury inquiry into Nard's allegation. Shortly after that, that grand jury investigation was terminated.

Nard is still convinced that he was treated unfairly. I don't know. I believe that there is something to what he says, although I must admit that these cases are extremely hard to pin down, with discretionary authority within the prosecutors office.

The problem is it seems to me that there is somebody—and I hate to suggest this now that you are going to be Attorney General—who really needs to look at this case, and give somebody like Senator Hatch or me, somebody besides the complainant, a reason why it was turned down.

That may be fine with me. Discretionary authority by the prosecutor is very acceptable to me if there is some basis for the decision. I have not been able to find that out. I want to know what role, if any, did you have in terminating the grand jury inquiry in Iowa. Maybe that is not true. Those are the facts that have been substantiated to me, or I believe have been substantiated.

What role, if any, did you have in the handling of these allegations by the U.S. attorney's office in Pittsburgh, and do you have any suggestions as to how the U.S. attorney's office can meet complaints from citizens when they feel a case has not been pursued?

Mr. THORNBURGH. I am somewhat at a loss to respond, Senator. My only knowledge of Mr. Nard relates to the fact that when I served as U.S. attorney in Pittsburgh, as a result of investigation by the Internal Revenue Service and upon reference from the Tax Division of the Department of Justice, Federal criminal charges were brought against Mr. Nard and he thereafter entered a plea of nolo contendere to certain of those charges.

Since that time, from time to time, Mr. Nard has lodged a series of complaints with various individuals and agencies throughout the country, and I have had very little direct impact, or contact, rather, with Mr. Nard. He is a very aggressive individual, and at one time incurred my ire because of threats he made against my wife during an airplane flight that she and he were on by chance between here in Washington and our home town of Pittsburgh.

But I am somewhat baffled by the allegation that I met——

Senator DECONCINI. Governor, I agree Mr. Nard can be as obnoxious as hell. [Laughter.]

Mr. THORNBURGH. Thou sayest.

Senator DECONCINI. He hasn't made any threats yet towards this Senator, but I understand I have told him that that does not stand well with me when I hear these kinds of things.

But my point is to get away from the individual here to this extent: In 1972, did you meet with the U.S. attorney from Iowa in Washington, D.C., and discuss the grand jury inquiry into *Nard's* case?

Mr. THORNBURGH. Senator, in 1972 I was the U.S. attorney in Pittsburgh.

Senator DECONCINI. That is right.

Mr. THORNBURGH. I would have no occasion to meet with the U.S. attorney from Iowa in Washington, D.C.

Senator DECONCINI. Well, or any place.

Mr. THORNBURGH. And I can categorically deny that I ever took any action that was designed to influence a grand jury investigation in Iowa into Mr. Nard's case.

Senator DECONCINI. That is important because this is the first time I have been able to get that for the record, and that is all I asked for.

Mr. THORNBURGH. Well, rest assured that that, in the firmest possible terms I can state to you——

Senator DeConcini. You did not meet with the U.S. attorney from Iowa in 1972?

Mr. Thornburgh. Well, I may have been at a U.S. attorney's conference with him.

Senator DeConcini. Other than a conference, you did not discuss his case?

Mr. Thornburgh. I don't recall, but I can tell you with as much certainty as I can muster that I never took any steps to terminate any investigation that that U.S. attorney was conducting into affairs of Mr. Nard. That is just preposterous.

Senator DeConcini. Very good; that is very helpful. Now, on the generic side of this issue, Mr. Nard, unfortunately, is not the only person who has come to me—he has just been the most persistent, I must say—who has lodged complaints, against both Democratic and Republican Attorneys General, that I can't make a judgment on; I am not a judge.

And it is very difficult to get the Justice Department to say something, particularly if the guy has threatened anybody or been off the deep end and been indicted or something, but even if they haven't.

Have you ever given some thought as to how you would cope with this for the credibility of our Justice Department? Even if the answer doesn't satisfy them, is there a process that we can hold up as saying this is the process; you make this appeal, you make this petition? If the Assistant Attorney General turns you down, you can appeal it on to the Attorney General. Of course, you can bring a citizen's suit, or whatever you have, if a lawyer advises you and you want to do it.

But it troubles me that there is no process there, and I am not suggesting that I have one. What I am asking is if you have given it any thought, or would you consider some kind of process? I think it would help.

Mr. Thornburgh. I think there is a process in place in the Office of Professional Responsibility, which received and acted upon, to my understanding, complaints that Mr. Nard had made somewhere along the line. That is an independent agency that is given the wide-ranging authority to look into complaints of improper conduct on the part of any employee of the Department of Justice.

Mr. Michael Sheheen, who has been director of that operation since its inception during the time that I served in the Ford administration, I think, has earned respect of people with whom he has dealt as a fair judge of these allegations.

I understand, as you say, I mean, if people aren't satisfied with that, then they try to go somewhere else. But I think the Office of Professional Responsibility over a period of time, at least as far as I know of its operations, has earned that kind of status and respect and——

Senator DeConcini. So you don't think any changes are necessary?

Mr. Thornburgh. Well, I would be glad to look into specifics, but I have never heard any allegations that the Office of Professional Responsibility has done other than perform its charge in a fair and effective way.

Senator **DeConcini**. Well, Governor, thank you. My time is about up. Let me just say on the brighter side that, in 1976, you were one of the first advocates in the combat of drug problems. You indicated that, not only did we need to look at interdiction and enforcement, which you strongly suggested, but you promoted education and rehabilitation.

Lo and behold, we are moving in that direction, not forsaking or diminishing enforcement and interdiction. I think it speaks well for you here before this committee, that taking over the chief law enforcement office of our land is someone who had that foresight. Based on your opening statement with Senator Kennedy, it appears you still feel that education and rehabilitation are the highest priorities for the balance of this administration and hopefully, for whatever administration is next. I look forward to any initiatives that you have in this effort.

As you know, the Senate is drawing a comprehensive drug bill. I hope you have an opportunity to review it. I met with Mr. Keating on that bill who had some suggestions regarding the drug czar and some of the other different problems that the Justice Department might have with the bill. I think you can play a major role in getting that passed up here and getting it perhaps better constructed for implementation.

Mr. **Thornburgh**. I would hope so, Senator.

Senator **DeConcini**. Thank you.

Mr. **Thornburgh**. Thank you.

Senator **Kennedy**. The Senator from Pennsylvania, Mr. Specter.

Senator **Specter**. Thank you, Mr. Chairman.

Governor Thornburgh, I would like to pursue the drug subject, which you have identified as your number one priority, and I concur that that is the number one priority today.

The issue of Federal involvement is one which I would like to discuss with you, and the application of the Armed Career Criminal bill, which you and I have already talked about privately, and that is legislation which makes it a Federal offense for a career criminal, defined as someone who has three major convictions, for that person to be caught in the possession of a firearm, and it gives a mandatory sentence of 15 years to life.

We have recently gotten Justice Department acquiesence on a drug task force in the City of Philadelphia, and I would like to ask for your thoughts about a greater Federal involvement in a city like Philadelphia, where the Federal Speedy Trial Act brings these defendants to court promptly, where in some circumstances there are provisions for detention without bail, where a danger to the community is demonstrated, and where you have these tough penalties, contrasted with State courts, as for example, in Philadelphia, which have tremendous delays, which have a shortage of judges, who are under indictment themselves in that city. I would like to see a greater Federal involvement, both from the point of view of putting the drug dealers on notice that the Federal Government is going to crack down, and also giving the public some assurance that there is Federal help on the way.

Mr. **Thornburgh**. My expectation, Senator Specter, is that the commitment made to the demonstration project in a major city like Philadelphia can demonstrate, if you will, in a laboratory setting the efficacy of different kinds of approaches that Federal law enforcement officers and prosecutors can take in conjunction with their State and local counterparts to have a much greater impact on drug trafficking in major metropolitan areas.

One of the attractions of the type of approach that I understand the Department is committed to in Philadelphia is that it will give us some empirical data and some experience in the application of a wide variety of tools to deal with the drug problem, and I would hope that constant assessment and monitoring of that project will give us a base to provide you with a definitive answer in that regard.

I share with you a commitment to using every available constitutional tool in this kind of effort against drug trafficking.

Senator SPECTER. I appreciate that commitment. The Federal Government is in a different position than are the State prosecutors to make that come about, and it is a totally different tone, at least in a city like Philadelphia, where the drug dealer is hauled into Federal court, as opposed to the State court, and that could have a very profound effect. I would like to see the matters pursued with that kind of a Federal presence.

Along that same line, Governor Thornburgh, I would like you to take a look at S. 411, which is a legislative effort on my part, it has been introduced for a number of Congresses, it has been on the books as an effort for the past 5 years, S. 411 tries to allocate 1 percent of our Federal budget to crime control, $10 billion over a 10-year period, with emphasis on a great many aspects, among them rehabilitation and education, court calendar control, but perhaps most fundamentally, the construction of prisons.

There have been some efforts along that line, but we need in this country 200,000 additional jail cells to house these career criminals, and the prosecutions really cannot be successfully completed unless we have some place to put them, and we have so many people who are being released from jail across this country prematurely, because of the absence of jail space, and also the evidence is compelling that many judges are not sentencing because of the absence of jail space.

So I would ask you to take a look at that and to provide some leadership as we look forward to the budget for the fiscal year 1990. That will be a task of the Reagan administration, and perhaps you will have an opportunity to pursue that for fiscal year 1991 as well, but I would commend that to your attention.

Governor Thornburgh, let me now ask you about the issue of white collar crime. That is something that you and I have discussed many times over many, many years, going back almost 20 years. I know that you do not know the details of the Hertz prosecution, but it is reported that, in the context of fraud against consumers in the amount of $13 million-plus that Hertz has agreed to restitution and has paid a fine of some $3,850,000, which the U.S. attorney for the Eastern District of New York appraises, perhaps the Department itself, is the largest fine ever collected in a consumer fraud case.

As I take a look at that case, if a company like Hertz can engage in a $13 million fraud and take a chance of not being caught and at the end of the rainbow have to pay the money back, it is very hard to really know that all the money has been paid back, and then to end up with a fine of $3,850,000, that is what I would call a slap on the wrist.

If there is to be a real stand taken against white collar crime—and we have pending now very serious investigations on procurement fraud in the Department of Defense, where again, it seems to me, we really have to put those people on notice that they are going to go to jail, that it is the only way to really see to it that people understand that crime does not pay. Big corporations can pay fines with ease.

Without commenting on the specific matters, which I know you are not in a position to do, I would be interested in your response for the record that, with Dick Thornburgh as Attorney General of the United States, that there will be a closer look at sending white collar criminals to jail for substantial periods of time.

Mr. THORNBURGH. Senator, I can just assure you that Dick Thornburgh, as Attorney General of the United States, will not be much different from Dick Thornburgh as U.S. attorney or Assistant Attorney General in charge of the Criminal Division, would evidence a continued concern about ensuring that our law enforcement efforts are collar blind as well as color blind, and that we can make a major effort to create a real deterrence to what was once aptly called crime in the suites, and I think that appropriate jail sentences, as I expressed in a detailed treatment of this matter during the time that I served in the Department before, have to be an important component of any effort that has credibility and deterrent capabilities, so I think you and I are of a mind on that, again without referring to any particular case.

Senator SPECTER. Governor Thornburgh, I would ask you to take a look, too, at the Antitrust Division in terms of enforcement. We have legislation pending at the present time in the Senate on retail price maintenance, where we are trying in the legislative sense to shift the burden of proof, to make it easier for private parties to maintain those actions. But that effort which has been made in the Senate and in the House is really borne out of the frustration for a lack of vigorous antitrust enforcement in the Department.

Now, I have had called to my attention repeatedly illustrations where manufacturers stopped a retailer from selling at a lower price, where there are complaints from other retailers in the area. One such matter brought to my attention in the last several days, a major retailer in Philadelphia sells a certain garment at about 65 percent of the cost in Philadelphia than he sells it in Washington, DC, and there is no doubt that at the end of that trail there is price fixing, but it is very difficult to be proved by someone who is in business who cannot undertake the kind of investigation.

Here again, it is not a matter of having a lot of prosecutions, it is a matter of setting a standard and of establishing the principle that certain conduct is against the law and will not be condoned, and those who violate it are going to be treated in a severe fashion, and where necessary, with jail sentences.

Great therapy came out of the early price-fixing cases in the electrical industry in Philadelphia several decades ago, and I would ask you to take a look at that line in the antitrust field, to see to it that we have the appropriate action and vigorous enforcement.

There is relatively little that Congress can do in a meaningful way to give broader legislative tools. It is a matter of enforcement.

Mr. Chairman, my time is up.

Senator KENNEDY. The Senator from Vermont, Mr. Leahy.

Senator LEAHY. Thank you, Mr. Chairman.

Governor, there have been some questions asked here today about Gen. Noriega, and I understand there will be follow-up questions, so I will not really go into that, other than to just make a short comment.

The whole Noriega episode is an example of hypocrisy and deceit in our government, and I do not mean that in a partisan way, as members of both parties can share some blame in that. But there is no doubt in my mind, from what I have seen of this, that the officials of our government have protected him unnecessarily over the years. He in turn made some of our drug agents and agencies look good, by making sure they might know about some drug activities, where they could then get the great headlines for the usual raids, claiming a street value of $18,400,000,000,000,000 as they seize a ship with a cargo that was purchased the day before for $200,000.

He made them look good, but at the same time people within our government knew of his own drug involvement, and many people who are knowledgeable in our government feel that he was protected during that time. There was a quid pro quo. Maybe it was not said quite this bluntly, but what it amounted to was, "General Noriega, you make us look good and then we won't look, period, when you are doing something bad," and that is what happened.

So, I feel you would find some nervous people in Federal law enforcement who wonder just how much we may dig into the Noriega matter. Be aware of it, look carefully at that. If there are people who protected him, they ought to know that our foreign policy cannot be set up in such a way to continue that protection.

There is a feeling also that some of our unwillingness to put the kind of pressure against Noriega that we should is based on the fact that we may have to reveal some mistakes in our own policy. Law enforcement should not drive foreign policy or vice versa.

Now, on another subject, I hope to work with you on some of the remaining judicial nominees. Many of them are people that I am eager to vote for, will vote for, and we are still waiting to finish the investigations on them.

We found that the Department is very, very selective in what they will respond to. In some instances we have sent them in confidence a letter marked "confidential," and their response will be reported openly in the press before it comes to us.

I would hope to be able to work with you or whomever you may wish to designate to try to expedite these things.

Mr. THORNBURGH. Certainly.

Senator LEAHY. I get to my office very early most mornings. I am glad to be here at 6:30, 7, 7:30, or on Saturdays, whatever might help, but let us get some of the answers to the committee's questions. They are usually things that can be done very quickly. We find a selective pattern in the responsiveness to some of our questions I might suggest, in light of the limited time that we have left in the Congress, that the Department should worry less about sending out press releases about delays and work more diligently about getting out these responses. At the end of the session they can send out all the press releases they want, there will be time.

I want to say, though, you have been credited with setting up the Public Integrity Section of the Justice Department, and I am glad to see that you feel that ethics is a priority in government, and not a nuisance. I am pleased with that.

I would like to read you the first paragraph of a speech you delivered in 1976, when you were Assistant Attorney General for the Criminal Division. I had been in the Senate for all of 1 year then. You said, "American citizens and taxpayers today are rightfully concerned over the integrity of our governmental institutions and of those public servants elected or appointed to guide them. Shaken by Watergate and subsequent disclosures, skeptical of the ability of our criminal justice system to combat large-scale corruption, our citizenry rightfully looks for some relief against those who would betray the public trust for public or private gain."

What has gone wrong? Why do we still have problems of ethics in government, whether it is in the Congress or in the executive branch or anywhere else? Are the laws tough enough? Is the enforcement tough enough? Or is it just the shortcomings of the people involved?

Mr. THORNBURGH. I think in my view, Senator, the failings are human failings, they are never going to be cured by laws or prosecutors or judges, in the aggregate of man or woman kind.

The key question has always been, in my view, how we as a society respond to those failings, are we intent upon seeing that those who betray the public trust are brought to the bar of justice, do we erect standards and values within government and other institutions in our society that make it clear that conduct that is unethical or illegal is not going to be tolerated.

Part of that role has to be effective leadership, to make sure that the codes of conduct are not only established, but are supported, honored, and enforced, because if they are not, then other kinds of informal codes of conduct are conveyed within an institution with a wink and a smile sometimes, codes of conduct that say you have got to go along to get along, that there is a recognition that "everybody is doing it," or other kinds of perceptions that accrue among those myriad of employees that serve in those institutions because of some uncertainty of about what the real values and principles of those institutions are.

It would be my hope, consistent with the concerns that you noted I expressed in 1976, to transmit from the Office of the Attorney General a clear and understandable signal that those standards and values which I have stated here today and elsewhere that call for excellence, for professionalism, for adherence to principles of ethical conduct are the order of the day, and to take steps to enforce those orders of the day throughout the time I have the opportunity to serve as Attorney General.

But I do not labor under any illusion that I or anyone else, either singly or in the aggregate of a legislative body or a court, can legislate or dictate cures to what are basically human failings, and I think we all have to be cognizant of the fact that the key question is what is our response individually and institutionally to those failings when they begin to crop up from time to time, as inevitably they will.

Senator LEAHY. In 1974, I was quoting Edmund Burke as I was running for the U.S. Senate, and you were quoting him then, too. You said all that is necessary for the forces of evil to triumph is for enough good men to do nothing. And then you went on to say in your own words, unless good men everywhere in this United States of America exert themselves to restore integrity to our political life, we may have little left to expend our energies upon.

Let me focus my question specifically on the Department of Justice. When Mr. Burns, the former Deputy Attorney General, testified a couple of weeks ago, I asked him whether, during all the times of difficulties at the Department of Justice, any of the President's top advisors ever called to ask whether things at the Department were as bad as the newspapers and other reports were saying. He said they had not. The White House Chief of Staff had not called, nor the Cabinet officials, nor the President, nor the Vice President, nor anybody else. Nobody called up and said, "Hey, are things really that bad over there?"

When you were Governor, if you heard stories in a particular agency, if questions were raised, did you pick up the phone and just call over there and say, "Hey, guys, what's going on?"

Mr. THORNBURGH. I do not recall having had the necessity of doing that. Let me say this, Senator, and perhaps this is as good a time as any for me to express a vote of confidence in the career professionals that serve this Department of Justice today, as they have served it since its inception:

I have not had an opportunity to fully examine, let alone resolve, the differing versions that you have received about what the state of morale is in the Department of Justice. It is obviously a source of concern to me. But I do have an abiding belief, based on my past experience and the opportunity I have had to observe the Department briefly during preparations for these hearings, that the career professional staff continues to perform at a very high level, and I would hope to induce them to continue that level of performance during the time that I serve as Attorney General.

We as Attorneys General come and go, as U.S. Attorneys General, as U.S. attorneys. We are the so-called political appointees. I do not necessarily regard that as a term of denigration, as you know, but there is a permanent career, professional staff within the Department of Justice that, in my experience over the years, has carried out its tasks with the highest standards possible, and I hope that——

Senator LEAHY. And I agree with you. Everybody in the career positions down there that I have met, whether they were appointed during this administration or the previous one, which was a Democratic administration, or prior to that one, which was a Republican administration, I have been extraordinarily impressed. If I was a senior partner of a law firm, on a recruiting drive, virtually every one of those men and women I have met, I would say, by the way, we could do better in our law firm in salary——

Mr. THORNBURGH. Stay away for the next 6 months, sir.

Senator **Leahy** [continuing]. And a lot of them have been recruited that same way and have turned it down because of their feelings toward public service, and none of us dispute that.

What I am concerned about is the unwillingness—and that goes back to your quote on Edmund Burke—the unwillingness of people to join the Department's career staff when you are having all of these stories. I do not believe everything I read in the press on those things, but when you have these reports day after day after day, when you are hearing both Republicans and Democrats raising the question, it is just passing strange to me that nobody picked up the phone. Nobody in a position of authority, nobody in a position to make changes, said "Let us find out what is going on." That is the thing that concerns me. I hope if you hear things during your tenure, you would pick up the phone, because when it comes down from the top office, people listen.

Thank you, Mr. Chairman.

Senator **Kennedy**. The Senator from Iowa.

Senator **Grassley**. Thank you, Mr. Chairman.

I am not going to ask any questions about Mr. Nard, but I sure owe you an apology. When you were in my office, I could have told you to expect some questions on him, because I imagine if my office was contacted, and obviously Senator DeConcini's was, several of these offices were contacted, and I could sure tell you that maybe something was coming up.

I am not in a position of advising you what to do, because I am not a lawyer, but this committee had a hearing involving Mr. Nard in the spring of 1982. He raised a lot of questions about the reappointment of that same U.S. attorney for the northern district of Iowa that you were supposedly meeting with in 1972 on his reappointment by President Reagan to that same position in 1982. It was because of Mr. Nard that it probably took about a year to convince this committee of the qualifications of Mr. Hultman to be reappointed. He was eventually reappointed, but there is a committee record of about 8 hours that you might want to review if you want a composite of what that is all about before you talk on it.

I think this gives you a flavor of what this town is all about. The higher up you are stationed in life, the more susceptible you are to unfounded charges, and that is just one example.

You probably know that I have had my differences as much as any member of this committee with Attorney General Meese. When I thought the Department lacked the will on defense fraud cases, I said so, or if I thought they bungled investigations, I let Mr. Meese know in clear terms.

But it seems to me that much of the criticism of the Attorney General, at least in this town, arises because of philosophy. For example, there are people in this town who disagree with a modest idea that Federal judges, unelected Federal officials as they are, appointed for life, ought to exercise self-restraint and follow the written law, rather than their own notion of what is wise social policy. There are people in this town that disagree with the idea that we should not tolerate organized crime, child pornography, or illegal drug use. There are people in this town that disagree that we should promote truth in the courtroom by changing the criminal laws, or that we should protect the rights of victims of crime as much as we protect the rights of the criminals.

Governor, when we visited in my office, I was pleased to learn that you shared the view that these issues were important and deserve emphasis in your Department, by your Department. Let me ask you, then, how would a Thornburgh Justice Department, assuming you have the time to chart a specific course, really differ from the current philosophical standpoint of the Department?

Mr. THORNBURGH. Well, that is hard to say, Senator. I do not know that I am in the position nor really am comfortable critiquing my predecessors. I much prefer to look forward, rather than backward, and I think from my record as a prosecutor and as the head of the Criminal Division and our discussion the other day, you can get a sense that I believe in aggressive, firm law enforcement measures, and I must state frankly that I have never seen anything necessarily inconsistent between that kind of a law enforcement effort and the absolute observance of civil rights and civil liberties of all of our citizens. They go hand in hand. They are two sides of the same coin, and I think that is the over-arching kind of message that I would want to convey about my tenure at the Department of Justice.

I indicated earlier on what my specific priorities would be, and they are in large part reflective of what you stated your own concerns to be. And I think in providing, if I can, the leadership that can invigorate prosecutors, investigators, and other Department personnel to implement those priorities, I have an opportunity to contribute to a more effective law enforcement effort and a more effective administration of criminal justice in the United States.

Senator GRASSLEY. I think that is a very satisfying answer. For me, in summation, would it be fair for me to say that you do not particularly think the Reagan administration or the Justice Department, in carrying out the philosophy of this administration, was wrong in choosing to emphasize these issues as they did, the agenda I just spoke to and the one you seem to make reference to?

Mr. THORNBURGH. I think that is an agenda that most Americans can subscribe to, Senator.

Senator GRASSLEY. Governor, again, as I mentioned to you privately, I am troubled by the possibility that former Justice Department lawyers may be violating conflict of interest laws and representing some clients in the current Pentagon investigation. There are reports that relatively high-level Justice lawyers may be taking advantage of their inside knowledge of Government information on procurement cases and using it to benefit their new clients.

Now, I understand there is an investigation now under way at the Criminal Division and, of course, I am not going to ask you, because I know you cannot comment on it now, but I would like your commitment to report back fully when the investigation is complete.

Mr. THORNBURGH. Any such investigation that involves the matters you alluded to would be a matter of great concern to me and I would be glad at the proper time and under the appropriate circumstances to share the results of that investigation, yes.

Senator GRASSLEY. Governor, you have earned a good reputation as a tough, but fair, prosecutor, unafraid to take on high-profile and public corruption cases. I would like to get your views on the recent public comments by the Independent Counsel—I am referring to Mr. McKay. He received a lot of attention when he asserted that the Attorney General "probably broke the law" and "probably would be convicted by a jury," and those were his words. He made these statements at the same time that he chose not to bring charges against the Attorney General.

Now, maybe you can help me out here, again because I am not a lawyer, but I thought that a prosecutor's ethical duty required him or her to put their proof where their mouth is, either charge a crime or not, but they are not permitted to refuse to indict and then damage somebody else's reputation without due process of law. Am I mistaken on this duty of a prosecutor?

Mr. THORNBURGH. No, I do not think you are mistaken, Senator. I share your concern in that regard and my own views are probably secondary to what observations were made in the concluding report of the Watergate special prosecution force, which expressed genuine concern about a decision not to prosecute, accompanied by an opinion expressed with regard to the culpability of the subject of that investigation. I would be glad to furnish that language to you, because it says in much clearer and perhaps less suspect terms than I might, what that portion of the prosecutor's obligation is.

Senator GRASSLEY. Was this practice questionable from an ethical standpoint?

Mr. THORNBURGH. It seems to me that it is at least questionable, and again I am bolstered by the fact that that opinion is shared by the very first and perhaps most famous special prosecution force that investigated the Watergate affair.

There is a lot of pressure always on prosecutors to step beyond their role of accumulating legally admissible evidence of a specific criminal offense for presentation in open court before a judge and jury, to prove a specific crime beyond a reasonable doubt. If you cannot do that, then you must decline prosecution and, having declined prosecution, it ill-becomes a responsible prosecutor to pass on gratuitous observations about that alleged guilt or innocence of the subject of the investigation.

Senator GRASSLEY. I know you cannot have an agenda for what you might propose in the way of legislation, but would you suggest that Congress ought to address this issue in the independent counsel law in any way? For instance, how about an amendment that would establish clear guidance on how to appropriately conclude the independent counsel's investigation?

Mr. THORNBURGH. It might be worthwhile. I would hope it would be unnecessary, but I would have to look at it——

Senator GRASSLEY. Mr. Chairman, I only have 1 minute left and I will reserve that and use that this afternoon. It is my assumption that you are coming back at 2 o'clock, is that right?

Senator KENNEDY. It is the intention of the committee to permit hopefully the conclusion of the first round this morning and then to reconvene at 2 o'clock.

Senator GRASSLEY. Okay. I will have further questions, Mr. Thornburgh, at that point.

Mr. THORNBURGH. Senator, I wonder if I might ask your leave—I have this statement from the Watergate special prosecution report, and I think it might bear some reading into the record, if the Chairman would permit me.

Senator GRASSLEY. Mr. Chairman, would you permit him to continue on this last question that I asked?

Senator KENNEDY. Certainly.

Mr. THORNBURGH. The report of the Watergate special prosecution force observes as follows:

> Most important, in terms of the American constitutional system of government, is the notion of fundamental fairness for those who, after investigation, have not been charged with any criminal misconduct. This consideration is particularly important for a special prosecutor, whose independence considerably reduces his accountability, and who must be unusually sensitive to possible abuses of his power. It is a basic axiom of our system of justice that every man is innocent unless proven guilty after judicial proceedings designed to protect his rights and to insure a fair adjudication of the charges against him.
>
> Where no such charges are brought, it would be irresponsible and unethical for a prosecutor to issue a report suggesting criminal conduct on the part of an individual who has no effective means of challenging the allegations against him or requiring the prosecutor to establish such charges beyond a reasonable doubt.

It seems to me that those observations of a decade ago are equally applicable today, and I suggest should guide any special prosecutor or independent counsel in bringing an investigation to a conclusion.

Senator GRASSLEY. Thank you very much. I appreciate that observation very much, and I agree with it.

Thank you, Mr. Chairman.

Senator METZENBAUM [presiding]. Thank you, Senator Grassley. Senator Heflin.

Senator HEFLIN. Governor, a Wall Street Journal article of today, which you have been asked about, raises a number of questions. Some of them have already been propounded to you. I am somewhat amazed in reading this, if it be true, about Gen. Noriega.

I was not in the Senate when the Panama Canal Treaty was entered into, but since he has been acting as he has in recent years, I have gone back and reviewed a great deal pertaining to the treaties and debate, discussion and newspaper accounts at that time.

There were newspaper accounts at the time that Gen. Noriega was involved in drug dealing, and that was in 1978. In this Wall Street Journal article, it would indicate that in 1976, when you were the head of the Criminal Law Division, again at that time, which would have been 12 years ago, at least, Gen. Noriega was then involved in drug dealing, and this statement would indicate that as of that time that there was an investigation by the Department of Justice, I suppose of which you were involved in the Criminal Division, concerning a purported plot by U.S. agents to assassinate Gen. Manuel Noriega, who now, of course, is the head of that government.

Do you recall in 1976 whether there were discussions of drugs and General Noriega?

Mr. THORNBURGH. As I stated earlier, Senator, my involvement with this report was peripheral, at best. The report was prepared and completed prior to my assuming office as Assistant Attorney General. It had been prepared at the request of the then Attorney General, by attorneys on detached duty from the Criminal Division. After the report was received, to the best of my recollection, by the Attorney General, it was referred to the Criminal Division for a determination as to whether any Federal criminal laws had been violated. That report was reviewed by staff attorneys within the division and apparently—again, I have not had access to the files and my involvement in this was only peripheral—apparently a determination was made that there were no Federal criminal offenses that had occurred that were prosecutable.

I think it is important to note again that it is significant that this Department of Justice, when there did accumulate sufficient evidence to indict General Noriega, did not hesitate to do so, and he stands under indictment today as a result of Federal investigative and prosecutive activity.

What the details of the allegations were, what the shortcomings were in any potential prosecutable case in 1976, I have no present recollection of and, as I say, I was not involved in that decision except in a peripheral way, because it was an investigation that was really responsible to the Attorney General.

Senator HEFLIN. Well, even if it was in a peripheral way, it would be logical to assume that if there was an investigation of a plot to assassinate an official in a foreign government and later his name would become almost a household word in America, that people would remember it. Do you have any recollection of his name as of that time?

Mr. THORNBURGH. Only as my recollection has been refreshed. Understand, at that time we had a plethora of investigations ongoing into alleged criminal activities as a result of the findings of the Rockefeller Commission report, which involved alleged assassination plots, alleged wrong-doing by FBI and CIA agents, both here and abroad. It was one of the major preoccupations of the Criminal Division's prosecutive staff and, as I stated, the details of those I simply was not involved in. But General Noriega's name would not have meant anything to me at that time, I doubt.

Senator HEFLIN. Then you do not have any recollection as to whether or not you, as the head of the Criminal Division, would have considered indicting him as early as 1976?

Mr. THORNBURGH. My recollection would be that, based on the review of the professional prosecutors who had gone through that report and determined that there were no indictable Federal offenses, that no indictments were forthcoming. That would be the normal course of events in consideration of allegations of that kind.

Senator HEFLIN. Of course, we are speculating, and I realize that your memory is dim on this, but if he was so much involved in drugs that U.S. agents, who I assume would be CIA agents, had devised a plan to possibly assassinate him, there must have been sufficient evidence in those days to have been considered relative to an indictment.

Mr. THORNBURGH. I assume it was considered.

Senator HEFLIN. But you have no recollection of that whatsoever?

Mr. THORNBURGH. Well, what I have said is that I was not the staff attorney who reviewed all of the evidence that was referred to us by the Attorney General. I can only assume that the staff attorneys who did review that reached a decision, as they would in a variety of cases they would handle on a day-to-day basis, that there was not sufficient evidence to go forward with an indictment. As to the particulars, I did not, would not and do not have any recollection as to whether or not the evidence—what the kind of quality of the evidence was.

Senator HEFLIN. You know, to me, this matter about Noriega was such that perhaps it will not be your judgment call, but in that there is such significance and such long history, I have a feeling that the American people ought to be fully informed of this man and his record. Here we are going 12 years back relative to it. We are dealing with him. He has the authority in 1990 to appoint the Chairman of the Panama Canal Commission which operates the Panama Canal, it ought to be released, the information concerning him as far back as we have.

I realize that that may well be that it comes under somebody else's agency, but I would suggest that you look into that and see—you said you were going to make some documents available—if there is information, that it be made available to us relative to that.

Mr. THORNBURGH. Well, I have committed to do that, Senator, with the caveat that I indicated. I am not familiar with the prosecution being brought in Florida against General Noriega, nor do I know the extent to which, if any, evidence accumulated previously by Federal investigative agencies reaching back perhaps as far as 12 years is going to be utilized in that prosecution.

Obviously, I am kind of fencing in the dark here, because I do not know about that case, but I have indicated that I would make appropriate disclosure to this committee, after a review of the documents that we have, that are obviously not going to prejudice this prosecution or other national security matters.

I think the important thing to remember is that General Noriega is under Federal indictment today because of an investigation carried out by this Department of Justice, and I am bound and determined to see that that prosecution goes forward, if appropriate jurisdiction can be obtained over the body of Gen. Noriega. That is one of the problems I understand that exists at the present time. But——

Senator HEFLIN. I would be vitally interested in seeing whether or not he ought to have been indicted 12 years ago.

That is all.

Senator METZENBAUM. Thank you very much, Senator Heflin.

Senator Simon.

Senator SIMON. Thank you, Mr. Chairman.

In going through the groups you have been associated with, I tried to see if there was anything possibly on the shady side you were involved in. I discovered, Governor—and, Mr. Chairman, you will be interested in this—you were a member of the Board of Trustees of the Shady Side Presbyterian Nursery School. [Laughter.]

Senator METZENBAUM. That is great research, Senator Simon, great.

Mr. THORNBURGH. I was afraid you would bring that up. [Laughter.]

Senator SIMON. I was interested in one remark that you made in introducing your family, and I asked my staff about it, and I learned that you have a personal interest in the problems of the disabled.

The reality is the disability community, those representing minorities, those representing women, view the Justice Department today as not at all sympathetic with their cause. Without commenting on where the Justice Department is today, can you tell me where the Justice Department will be with Dick Thornburgh leading it?

Mr. THORNBURGH. Well, I would hope it would be where I have tried to lead every other organization that I have been associated with, and it can be stated, I suppose, in simple terms and that is the words that appear on the facade of the U.S. Supreme Court, "equal justice under law," and that means that those persons who look to the law for protection and for resolution of their grievances will not be treated differently because of their race or physical condition or gender or ethnic background or religious beliefs, a commonplace observation, really, about this Nation.

Oftentimes there are great controversies, Senator, as you know, about ways and means in which this goal can be reached, but I would hope that none of us ever swerve from keeping that in mind, and I certainly do not intend to.

Senator SIMON. But your record suggests that there is a sensitivity.

Mr. THORNBURGH. I hope so.

Senator SIMON. And for some people, it is a little more difficult sometimes to get that equal justice.

Let me pose a hypothetical question. I notice that among the organizations that you have served, you have been Director of the American Civil Liberties Union in Pittsburgh. In going through the record, I could not find where you had taken a stand on the issue of whether we should have a constitutional amendment for school prayer, something that is favored by this administration, but let us just say in theory this is something you think is not wise, and the President asks you. . . . On that or some other issue where you differ with the administration, how are you going to handle something like that?

Mr. THORNBURGH. Well, that unfortunately is a poor example, because I happen to agree with the President in that regard. I think that anyone who serves a President, a Governor, a mayor, or whomever it may be, who is the chief executive, owes that chief executive his best opinion on issues of the day and should assert that without any qualm in attempting to be of aid and assistance and support to individuals who have appointed them to positions of responsibility.

On the other hand, there is a degree of loyalty that is owed to a chief executive officer that should not be circumvented or transcended by actions to push one's own agenda, and it comes down to a matter of judgment, Senator. I think on certain matters, feelings and beliefs, commitments may be so strong that an individual could no longer serve in that administration, and we have seen that happen from time to time at all levels of government.

On the other hand, to make a cause celebre out of every difference of opinion I do not think is a wise course to follow. Between those two extremes, it is a fine judgment that has to be undertaken.

I must say, lest there be any doubt, that I am a strong supporter of President Reagan and his agenda is my agenda. We have differed from time to time, to be sure, but I think it is unlikely that there is any difference that has existed over the years or exists today that would cause me to be unable to carry out my responsibilities as Attorney General within President Reagan's administration.

Senator SIMON. Well, your attitude is not going to be one of complete subservience, no matter what?

Mr. THORNBURGH. I owe the President my best judgment, particularly about legal matters, where he has asked me to be the preeminent legal authority in the land. I take that responsibility seriously, but I know, having been a chief executive myself, that once questions of constitutionality have been settled, there are a lot of other factors that go into a decision other than what a particular course of action based on legal counsel's advice may be.

Senator SIMON. A document was circulated to the Attorney General and the department heads in the Justice Department by Brad Reynolds that can only be considered a political document. Its theme is, "How can we take advantage of the situation politically?" In that document, among other things, Mr. Reynolds says, "In addition, we must polarize the debate, we must not seek consensus, we must confront."

And Mr. Reynolds used me as an example. I had made a statement saying that if we provided more jobs in the inner-city and other disadvantaged areas that we might not have to build as many prisons. His document said the Department of Justice must be on the side of more prisons and, to polarize the issue, we must attack those by name such as Senator Paul Simon who take the other approach. Is this kind of a document going to be circulated with Dick Thornburgh as Attorney General?

Mr. THORNBURGH. I am not familiar with the document or the circumstances that gave rise to its circulation, Senator. It is a little hard for me to judge it in the absence of——

Senator SIMON. But forgetting what has been circulated, are you going to be encouraging people to use the Department of Justice for political purposes?

Mr. THORNBURGH. Let me answer this way: I will not hesitate to state clearly and use appropriate tactics to achieve our goals in making a case with the Congress. I do not think there is anything wrong with that. There is a constructive tension between the executive and legislative branches, and we all know that. We have all lived through it, and you will hear from me directly and to the point, sometimes probably more directly and to the point than you might wish, if there are differences on policy, and——

Senator SIMON. That I welcome.

Mr. THORNBURGH [continuing]. And if that is the thrust of that recommendation, then I am not sure that I can say that I would forego any such effort, but I am not——

Senator SIMON. That I welcome.

Mr. THORNBURGH. There is bound to be confrontation, I guess is what I am saying, from time to time.

Senator SIMON. There is no question about that, and that I welcome. But you served under Ed Levi as Attorney General.

Mr. THORNBURGH. I did indeed.

Senator SIMON. We knew that whatever stand he took was because he believed it served the cause of justice, not because there was some kind of political game being played.

I guess what I want from you is a commitment, "I'm going to serve the cause of justice, I'm not going to be playing the same political games."

Mr. THORNBURGH. I would hope and expect that you could make the same judgment about my tenure as you did of Attorney General Levi, who I was proud to serve, a man for whom I have a great deal of respect and who, during his tenure, I think exemplified the kind of approach to questions of law that I would hope to embody.

Senator SIMON. One final question, because my time is up, and then I will look forward to a few questions this afternoon. In February of this year, a Federal bankruptcy judge ruled that the Department of Justice had purposely driven a small software company called Inslaw into bankruptcy and had stolen its software through "trickery, deceit, and fraud." In the process, a Department of Justice employee who blew the whistle was asked to leave. The judge who handed down the decision was not reappointed and was replaced by one of the Department of Justice lawyers who argued the Inslaw case.

Frankly, I do not know all the details, but I wonder if you are willing to have someone check into this very, very carefully?

Mr. THORNBURGH. I must say that I am unfamiliar with it. If you will apprise us of it, I would be——

Senator SIMON. In that same connection, if I may follow through, Mr. Chairman, Senator Nunn's Subcommittee on Investigations has asked for some information regarding this, and the Department of Justice has not supplied the documents. Assuming there is nothing of a classified nature, and I would not imagine there is, are you willing to supply those documents to Senator Nunn's subcommittee?

Mr. THORNBURGH. With the usual caveats, Senator, I am. I would have to note that in my experience, there is nothing more contentious between the legislative and executive branches than the matter of what should be furnished in the way of information and documentation or whatever. It is particularly sensitive in the Department of Justice, in my experience. I can only assure you that I will make a good-faith determination that I hope will satisfy you in this matter and your colleagues in other matters that come up during my tenure.

There is no desire on my part to obstruct congressional inquiry, but you know better than I that there are certain ground rules that have to be followed, and I will try to apply them in good faith with respect to this matter, as to any other matter that may come up.

Senator SIMON. Thank you. Thank you, Mr. Chairman.

Senator METZENBAUM. Thank you, Senator Simon.

Mr. Thornburgh, we have had a number of questions concerning documents. I am not certain whether you have seen it or not, but during the recess, if you care to look at it, one of my staff will make it available to you, committee staff will. In case you want to see this document to which some of us——

Mr. **Thornburgh**. What document is that, Senator?

Senator **Metzenbaum**. That is a document concerning the meeting that was referred to in the Wall Street Journal article by Senator Heflin and I, and Senator DeConcini have all inquired of you concerning it. Just in the event that you have not seen it and want to see it, you are certainly welcome to do so during the recess.

Mr. **Thornburgh**. Thank you.

Senator **Metzenbaum**. The committee stands in recess until 2:00 o'clock.

[Whereupon, at 12:37 p.m., the committee was in recess, to reconvene at 2 p.m., the same day.]

AFTERNOON SESSION

Senator **Kennedy** [presiding]. The committee will come to order. We will now resume the hearing.

Just before I start in, Governor, just on my own questions, I know this morning that Senator Metzenbaum and others asked you questions about the Defeo report and your role in the department's decision about when to make the report available to Congress. During the recess, we provided you with the material referred to by Senator Metzenbaum, and I will give you the opportunity to make any comment now, if you wish.

Mr. **Thornburgh**. I would like to address that question, Senator. I am sorry that Senator Metzenbaum is not here. Perhaps it might be well to wait until——

Senator **Kennedy**. I expect he will be back, and maybe you can respond at that time. We will not charge it to the time of the Senator, because I think——

Mr. **Thornburgh**. I have inquired about the circumstances and would very much like to address some misunderstandings and misapprehensions that obviously were in the Senator's mind this morning.

Senator **Kennedy**. Fine. Well, as soon as he returns, we will go back to that subject matter.

Earlier today, in response to a question from Senator Simon, you said that your goal at the Department would be to achieve the ideal of equal justice under law and assure that all people are not treated differently because of their race, gender or creed. The passage of the landmark fair housing legislation by the Senate this week highlights the great progress we can make in the area of civil rights when members of both parties are willing to work together to fulfill the constitutional guarantee of equal justice under law for all Americans.

I would like to ask you now about one of the most important of our civil rights, and that is the right to vote. One of the most important functions of the Attorney General is enforcing the Voting Rights Act, to ensure that every American has an equal right to participate in our democracy.

When you were Governor of Pennsylvania, your office issued a management directive in April 1984, banning voter registration activities in State unemployment and public assistance offices. As I understand it, that directive upset a longstanding policy of permitting voter registration activities in such offices. Within 10 days, a Federal court in Philadelphia issued a preliminary injunction against that directive, because it violated the first amendment.

Then in March of 1986, 2 years later, in the very next election cycle, the State again enforced the directive against registration activities. Its defense was that the prior preliminary injunction had expired. That defense did not hold much water, and another temporary restraining order was issued in September 1986 against enforcement of the directive.

I would be interested in your response.

Mr. THORNBURGH. I must say at the outset that I again am somewhat at a handicap because I was not specifically involved in this particular process or decision-making. It was carried out by persons in my administration, but I have inquired and tried to reconstruct as best I can what happened.

In 1984, the Secretaries of the Department of Public Welfare and the Department of Labor and Industry had to deal for what was in the first time in their experience people coming into their offices which were serving persons on welfare and unemployment compensation, and attempting to set up booths and to register people to vote, and in their judgment at the time that had a disruptive effect in the offices and, on their recommendation, an order was issued banning that kind of activity within these two offices.

That order did indeed go to court and an injunction was issued against the practice, but by that time the issue was more or less moot because the registration period had expired.

In 1986, we undertook to place in those offices registration forms that could be used by persons applying for welfare or unemployment compensation benefits to register to vote. We had a very simple way you could register in Pennsylvania, postage-paid forms can be filled out, dropped in a mailbox, and that accomplishes the registration.

We felt that that was an important way to evidence our interests in giving people access to voting registration and, in particular, because of the concern that had been expressed in 1984, that it was appropriate to put them in the offices of the Department of Public Welfare and the Department of Labor and Industry, where benefits were being applied for and disbursed.

Nonetheless, the persons interested in this Project Vote came back again and still wanted to set up their booths in these offices, and we felt at the time we ought to get a definitive determination of what the ground rules were for this kind of activity. The court order in 1984 had not really laid out a modus operandi for this kind of activity, and as a result the court order that was entered in 1986 set down some very clear ground rules that specified, first of all, that any solicitation such as that carried out by Project Vote would have to be done only in public areas, that it could not interfere—this is what the judge's order stated—it could not interfere with the receipt or advice or benefits by the people who were there for that primary purpose; in particular, that no one could be approached or solicited in a line if they were within the first two people in line.

Most importantly, from the point of view of the nonpartisan effort of this, the literature that was used had to be nonpartisan in nature, and the Project Vote people had been passing out literature that was partisan in nature, and that order was important to maintain the integrity of the process as far as we were concerned. If there was any disruption, the court order allowed the persons in charge of the office to eject the individuals responsible. In general, this was to be done in an orderly, regulated way.

Now, that was satisfactory to us. The effort proceeded without any further controversy, and I think out of that came an agreement or recognition of the circumstances under which these kinds of activities should have been carried out.

Whether or not there was some over-reaction on the part of some of our individual office chiefs, one of whom sought to have two people arrested at one time or another, or an overreaction on the part of the Project Vote people, who obviously regarded this as a major project on their part, I am not prepared to say. But insofar as I can reconstruct the activities of 1984 and 1986, that is what was at the bottom of it.

Senator KENNEDY. Were the complaints coming from the people who were trying to get services?

Mr. THORNBURGH. I am not aware whether they came from the people who were dispensing the services or who were the beneficiaries of it, but a judgment was made at the outset in 1984 that this was either disrupting or had the potential to disrupt the orderly delivery of those services.

Senator KENNEDY. The 1984 order actually provided, as I understand, just looking it over here now, that same type of guidance; 1984 says "to distribute nonpartisan literature," it talks in two places "shouldn't interrupt workers if said workers are two places in line or more from the service window." It talks about "be limited to public areas only."

Mr. THORNBURGH. Is that the 1984 or the 1986?

Senator KENNEDY. That is the 1984—"which disrupt the normal business," "ingress and degree of people using the office shall not be impeded by the plaintiffs," "a card table or a table of comparable size may be placed in one position in a public area."

Mr. THORNBURGH. Who was the judge on that, Mr. Chairman?

Senator KENNEDY. Clifford Scott Green.

Mr. THORNBURGH. Right. I am obviously——

Senator KENNEDY. This was issued the 19th day of April 1984, at 4:45.

Mr. THORNBURGH. I am in error, then, because my advice was that the order in 1986 was the one that had established that procedure.

Senator KENNEDY. Well, were you aware of the 1984 order?

Mr. THORNBURGH. Not of its terms. I was aware that there was some controversy about voter registration in these offices, but it was only through newspaper reports or whatever.

Senator KENNEDY. Were you aware that they were going to issue a similar one later on, in 1986?

Mr. THORNBURGH. I was not at the time that it was issued. I learned afterwards that it had been issued. I was aware, because of the—in the interim, I was aware of the plan to place voter registration forms in those offices, which seemed to me to make good sense. Let me say this——

Senator **Kennedy**. Well, you can understand the importance of it, because clearly you are going to have an important responsibility in terms of the enforcement of the Voting Rights Act and laws, and those are obviously of enormous importance and consequence. I will place in the record the management directive and the 1984 and 1986 orders.

[The aforementioned material follows:]

Commonwealth of Pennsylvania
GOVERNOR'S OFFICE

MANAGEMENT DIRECTIVE

205.14
Number

Subject: Prohibition of Activities Not Specifically or Directly Connected With the Official Business of the Commonwealth on Commonwealth Property

By Direction of: Murray G. Dickman, Secretary of Administration

Date: April 9, 1984

Activities which are not specifically or directly connected with the official business of the Commonwealth are strictly prohibited in Commonwealth facilities and offices. This directive clarifies important policy with respect to the use of Commonwealth property.

1. PURPOSE. To announce policy regarding the use of Commonwealth facilities and offices by individuals, groups, or organizations to conduct activities which are not specifically or directly connected with the official business of the Commonwealth. This policy is being promulgated to enable the Commonwealth to conduct its official business in the least disruptive manner and to protect the privacy and sensitivities of clients, recipients of government benefits, and all members of the public who have legitimate business with the Commonwealth in a Commonwealth facility or office.

2. DEFINITIONS. For purposes of this directive the following phrases shall be defined as:

a. Commonwealth facilities and offices. Buildings or parts of buildings owned or leased by the Commonwealth for use by an executive agency.

b. Official business of the Commonwealth. Legally defined or authorized functions of or services provided by an executive agency or employment related matters involving Commonwealth employes.

c. Have legitimate business. To have business specifically or directly connected with the official business of the Commonwealth.

3. SCOPE. This directive is applicable to all executive agencies, officials, employes, offices, and facilities under the Governor's jurisdiction. It applies to all activity not specifically or directly connected with the official business of the Commonwealth, including but not limited to commercial or retail activities; business activities, whether for profit or nonprofit purposes; the distribution of leaflets and written materials; and all political activity, regardless of the partisan or nonpartisan nature of the activity.

4. POLICY.

a. Commonwealth facilities and offices are to be used exclusively for conducting the official business of the Commonwealth.

b. Commonwealth facilities and offices shall be used only by individuals, groups, or organizations who have legitimate business on the premises. These facilities and offices shall not be used by the public for purposes not specifically or directly connected with the official business of the Commonwealth.

EXHIBIT
10

Distribution: B

c. All activity by individuals, groups, or organizations not specifically or directly connected with the official business of the Commonwealth is strictly prohibited in Commonwealth facilities and offices. Examples of the kinds of activities which are specifically prohibited include but are not limited to the following:

(1) all commercial, retail, or business activities, whether for profit or nonprofit purposes, including sales, negotiations, the taking of orders, and displaying of wares not specifically or directly connected with the official business of the Commonwealth in Commonwealth offices or facilities;

(2) distribution of leaflets and written materials not specifically or directly connected with the official business of the Commonwealth in Commonwealth offices or facilities;

(3) distribution of partisan or nonpartisan campaign literature, buttons, or other campaign materials, the circulation of political petitions, and voter registration in Commonwealth offices or facilities; and

(4) the soliciting, harassing, intimidating, coercing, or in any manner invading the privacy of recipients of government services or benefits or individuals who have legitimate business with the Commonwealth in Commonwealth offices or facilities.

The above are examples which are illustrative of the kinds of activities which are prohibited and do not constitute an exhaustive list of prohibited activities.

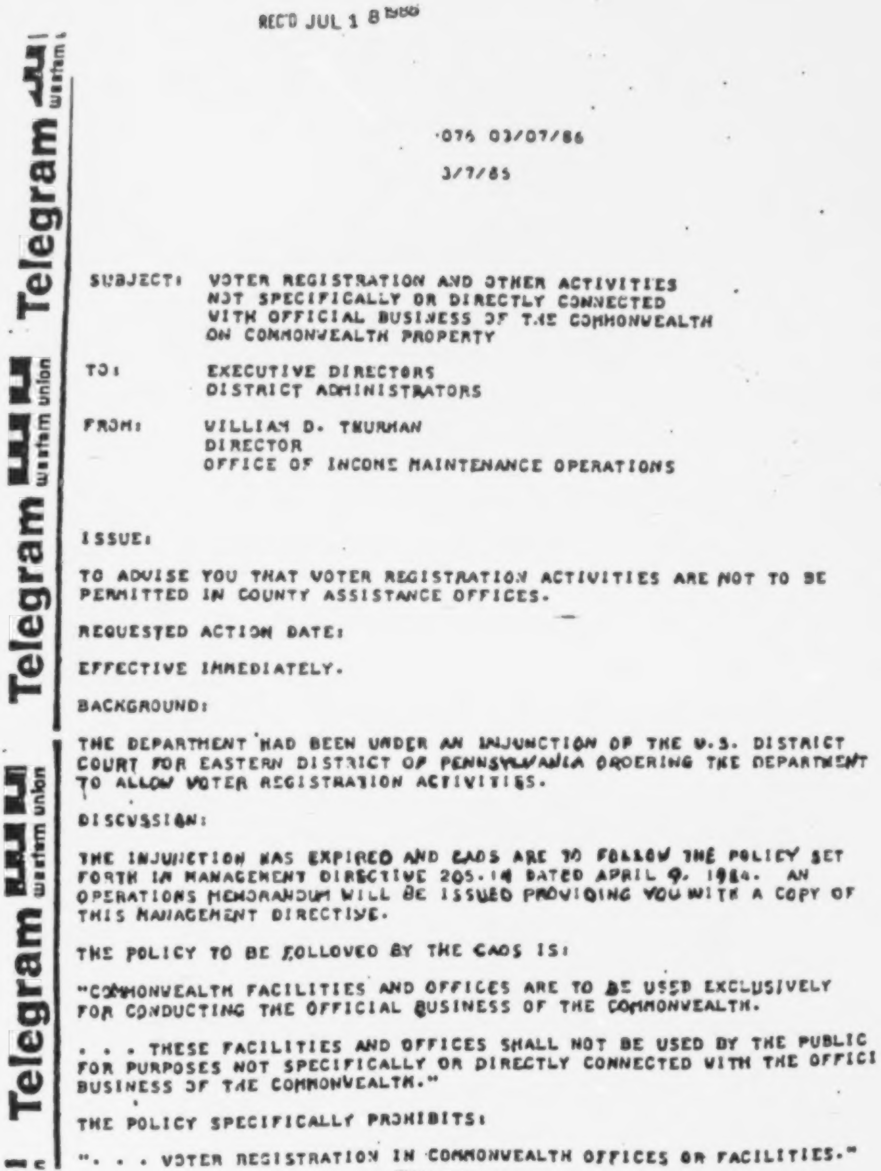
d. The above prohibitions concerning the use of Commonwealth facilities and property apply at all times.

5. RESPONSIBILITIES.

a. Heads of executive agencies are to insure that this policy is disseminated and enforced.

b. Supervisors in executive agencies are to insure that activities which are not specifically or directly connected with the official business of the Commonwealth are prohibited in Commonwealth facilities and offices. Supervisors who fail to comply with this directive will be subject to appropriate disciplinary action.

c. All state employes in executive agencies are required to comply with this directive. Any state employe who fails to comply with this directive will be subject to appropriate disciplinary action.



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SUBJECT: VOTER REGISTRATION AND OTHER ACTIVITIES
NOT SPECIFICALLY OR DIRECTLY CONNECTED
WITH OFFICIAL BUSINESS OF THE COMMONWEALTH
ON COMMONWEALTH PROPERTY

TO: EXECUTIVE DIRECTORS
DISTRICT ADMINISTRATORS

FROM: WILLIAM D. THURMAN
DIRECTOR
OFFICE OF INCOME MAINTENANCE OPERATIONS

ISSUE:

TO ADVISE YOU THAT VOTER REGISTRATION ACTIVITIES ARE NOT TO BE PERMITTED IN COUNTY ASSISTANCE OFFICES.

REQUESTED ACTION DATE:

EFFECTIVE IMMEDIATELY.

BACKGROUND:

THE DEPARTMENT HAD BEEN UNDER AN INJUNCTION OF THE U.S. DISTRICT COURT FOR EASTERN DISTRICT OF PENNSYLVANIA ORDERING THE DEPARTMENT TO ALLOW VOTER REGISTRATION ACTIVITIES.

DISCUSSION:

THE INJUNCTION HAS EXPIRED AND CAOS ARE TO FOLLOW THE POLICY SET FORTH IN MANAGEMENT DIRECTIVE 205.14 DATED APRIL 9, 1984. AN OPERATIONS MEMORANDUM WILL BE ISSUED PROVIDING YOU WITH A COPY OF THIS MANAGEMENT DIRECTIVE.

THE POLICY TO BE FOLLOWED BY THE CAOS IS:

"COMMONWEALTH FACILITIES AND OFFICES ARE TO BE USED EXCLUSIVELY FOR CONDUCTING THE OFFICIAL BUSINESS OF THE COMMONWEALTH.

. . . THESE FACILITIES AND OFFICES SHALL NOT BE USED BY THE PUBLIC FOR PURPOSES NOT SPECIFICALLY OR DIRECTLY CONNECTED WITH THE OFFICI BUSINESS OF THE COMMONWEALTH."

THE POLICY SPECIFICALLY PROHIBITS:

". . . VOTER REGISTRATION IN COMMONWEALTH OFFICES OR FACILITIES."

EXHIBIT "B"

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FILED
APR 19 1984
MICHAEL E. KUNZ, Clerk
By ______ Dep. Clerk

PROJECT VOTE, et al. : CIVIL ACTION

vs.

DICK THORNBURGH, et al. : NO. 84-1255

FILED . APR 19 1984

PRELIMINARY INJUNCTION

AND NOW, pursuant to Rule 65 of the Federal Rules of Civil Procedure, and upon consideration of the pleadings, evidence produced at a hearing on plaintiffs' motion for a preliminary injunction, the memoranda of law submitted, and arguments of counsel, for the reasons stated of record, I find that:

1. Plaintiffs will suffer immediate and irreparable harm to their First Amendment constitutional rights of speech, association and assembly if their voter registration activities are not resumed immediately, and thus defendants are enjoined from continuing to deny plaintiffs access to waiting rooms in Pennsylvania county assistance and unemployment security offices.

2. Plaintiffs have stated substantial claims which support a finding that plaintiffs have established a reasonable probability of eventual success on the merits of their claims and that defendants' denial of access to the above waiting rooms is a violation of their First and Fourteenth Amendment rights.

3. This preliminary injunction will not cause harm to defendants.

4. The public interest weighs in favor of granting the injunction.

4/20/84

NOW, THEREFORE,

It is hereby ORDERED and DECREED, pending final hearing, that:

1. Defendants shall permit plaintiffs, their agents, servants and other people, upon reasonable notice, to enter the waiting rooms in county assistance and unemployment security offices Monday through Friday, during the hours they are open to the public:

a. to speak with unemployed workers, welfare recipients and the general public in these waiting rooms;

b. to distribute nonpartisan literature or printed material related to voter registration to said unemployed workers, welfare recipients and the general public; and,

c. to solicit voter registrations.

2. Activities conducted by plaintiffs shall not interfere with the normal operation of the office.

3. No unemployed worker or welfare recipient shall be approached by plaintiffs while he/she is being helped by a Pennsylvania Department of Public Welfare or Department of Labor and Industry employee.

4. Unemployed workers standing in line at service windows may be approached by plaintiffs if said workers are two places in line or more from the service window.

5. Plaintiffs' activities described herein shall be limited to public areas only.

6. Local office managers shall have the authority to curtail plaintiffs' activities which disrupt the normal business

activities of the offices. However, should a manager believe such a situation to exist, he or she must apprise plaintiffs of his or her objections to their activities and the reasons for such objections and give said plaintiffs the opportunity to cease the allegedly objectionable activity.

7. Ingress and egress of people using the office shall not be impeded by plaintiffs.

8. A card table or a table of comparable size may be placed by the plaintiffs in one position in a public area, such table shall not impede or hinder the business activities of the offices.

9. Plaintiffs may sit behind said table to solicit and assist voter registration.

10. Any plaintiff materials discarded within the building shall be policed by plaintiffs.

11. The entry of security by plaintiffs is waived.

Issued this 19th day of April, 1984, at 4:45 p.m.

BY THE COURT:

Clifford Scott Green

CLIFFORD SCOTT GREEN, J.

cc: 4/20/84

SF Gold

SA Newman

A Travagrossa

D.O. Schellinberger

UNITED STATES DISTRICT COURT
WESTERN DISTRICT, PENNSYLVANIA
TEMPORARY RESTRAINING ORDER
ISSUED: SEPTEMBER 26, 1986

NOW, THEREFORE,

It is hereby ORDERED and DECREED that:

1. Defendants shall permit plaintiffs, their agents, servants and other people, upon reasonable notice, to enter the waitng rooms in county assistance and unemployment security offices Monday through Friday, during the hours they are open to the public:

   a. to speak with unemployed workers, welfare recipients and the general public in these waiting rooms;

   b. to distribute nonpartisan literature or printed material related to voter registration to said unemployed workers, welfare recipients and the general public; and

   c. to solicit voter registrations.

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7. Ingress and egress of people using the office shall not be impeded by plaintiffs.

8. Any plaintiffs material discarded within the building shall be policed by plaintiff.

9. The entry of security by plaintiffs is waived.

10. This temporary restraining order shall renain in effect until October 6, 1986 at 4:30 p.m., by the court. Gerald J. Weber, U.S. District Court Judge. Issued this 26th day of September, 1986 at 5:30 p.m.

Senator KENNEDY. The question here obviously is the sensitivity of the importance of the right to vote and whether you knew or should have known, given the importance and significance of it, and whether people are going to feel that, as Attorney General, this is going to be something that you are going to—the protection of the voting rights is going to be something that you are going to give a high priority to.

Mr. THORNBURGH. Well, I could certainly have no compunction about these kinds of activities being carried out under the terms and conditions that were finally incorporated in the order or orders, as the case may be, and I think it is important to indicate that there was no grand scheme or overall design to prevent people from registering to vote. I think the placement of the mail registration forms in the offices was designed to accomplish just that, to enlarge the population who had available to them ways and means very simply affecting a registration. It is a lot easier to register by filling out a mail form than to go through the process that the Project Vote people were engaged in.

Senator KENNEDY. The directives, of course, in question here were issued by your office.

Mr. THORNBURGH. Yes, they were, I believe by my Secretary of Administration.

Senator KENNEDY. Again, the power of the Office of the Attorney General in these voting cases is illustrated by another incident in the 1984 campaign. Many of the members of this committee have been very troubled by the manner in which the Justice Department responded to a clear voting rights abuse in 1986. Documents supplied by the Civil Rights Division to the Committee clearly indicate that the professional staff of the Division recommended that the FBI be requested to conduct an investigation to determine whether the so-called ballot integrity program conducted by the Louisiana Republican Party in 1986 violated the criminal civil rights laws. That program involved targeted efforts to have black voters removed from the registration rolls of Louisiana.

The professional staff found, after their preliminary investigation, that the charges of a deliberate conspiracy to deprive black voters of the franchise was supported by the evidence received to date. But William Bradford Reynolds overruled their recommendation for an FBI investigation.

We have got an election coming up in just a few months, as you well understand, and I think it is important for you to give us your assurance that you will do everything in your power to vigorously enforce the Voting Rights Act in a non-partisan manner so that all Americans have the equal right to vote.

Mr. THORNBURGH. I think it is a nonpartisan matter, it should be enforced in a bipartisan or nonpartisan manner, and I can give you that assurance, Mr. Chairman.

Senator KENNEDY. Let me move on now to Mr. Reynolds' activities in the Justice Department. As you are familiar, in 1985, the committee rejected Mr. Reynolds' nomination to serve as Associate Attorney General. Despite that rejection, last year, Attorney General Meese gave Mr. Reynolds the additional position of Counselor to the Attorney General, and gave Mr. Reynolds additional policy responsibility in a broad variety of areas, from Iran-Contra to drug policy.

At hearing in May of this year, Mr. Reynolds admitted that he is involved in formulating and implementing Department policy on criminal law matters, despite the fact that the Associate Attorney General, the position to which he was rejected, is supposed to have overall responsibility in this area.

Many members of this committee view that as an arrogant attempt to end-run the committee's advice and consent function. My question is: will you assure the committee that Mr. Reynolds will not be given any responsibilities at the Department beyond those of the position for which he was confirmed?

Mr. THORNBURGH. Well, with respect to any personnel matters in the Department, Mr. Chairman, I think it is premature for me to express any judgment or give any assurances either that persons will or will not be——

Senator KENNEDY. That is not my question. The question is will their responsibility, whoever they may be, be limited to what their statutory function should be and their responsibilities should be. What I am getting at here is he was rejected for one position, for which under the statutes, he was supposed to come to the Congress for advice and consent; and then there was a jiggling around of responsibilities and he was given, at least what many of us on this committee believe and I think from that memoranda that you might have had an opportunity to review, a wide variety of different areas that are particularly reserved for the position which Mr. Reynolds was rejected for.

My question is will you assure that, whoever is going to be in the positions for which they are confirmed for or rejected for, are going to have the responsibilities which are designated under the statute and not others.

Mr. THORNBURGH. I cannot conceive of a situation where someone who had been appointed and confirmed for a position would not exercise the full extent of the responsibilities in that position, and I can assure you that that would be the case.

[The documents referred to follow:]

Office of the Attorney General
Washington, D.C. 20530

22 February 1988

MEMORANDUM FOR HEADS OF DEPARTMENT COMPONENTS

FROM: Wm. Bradford Reynolds WBR
Assistant Attorney General and
Counselor to the Attorney General

Pursuant to the discussion at Thursday's General Management meeting concerning Department strategy for the remainder of the administration, I am attaching a statement of themes for your review. Please give consideration to ways in which your activities can highlight and reinforce these themes, and direct comments or questions to me.

A STRATEGY FOR THE REMAINING MONTHS

Here is a statement of theme:

"Particularly as the "baby boom" generation becomes a generation of young parents, Americans today are paying more and more attention to the quality of life in their communities. And almost every major issue they must deal with -- such as drugs, obscenity and AIDS -- involves public health or public safety or both. It is time we directed our efforts toward improving the public health and safety of our communities."

In pushing this theme, it is necessary that we state clearly and often the character of the various issues -- i.e., that they are public health or safety issues. We must define them as such, and insist on the definition, in order to keep the debate on our terms. In addition, we must polarize the debate. We must not seek "consensus," we must confront. Of course, we must confront sensibly, in ways designed to win the debate and further our agenda. What follows is an issue-by-issue analysis that where possible proposes means of polarization.

Drugs. Overall, we should send the message that there are two ways to approach drugs: the soft, easy way that emphasizes drug treatment and rehabilitation versus the hard, tough approach that emphasizes strong law enforcement measures and drug testing. Naturally, we favor the latter.

To show our seriousness, we should develop and implement a law enforcement strategy that would prosecute users under provisions enacted in the 1986 legislation, and we should continue to implement drug testing in the Department and the executive branch generally, while defending drug testing in the courts. The tough approach would excite the drug libertarians who say drugs should be a matter of private choice; this in turn would allow us to show how such a view threatens public safety and public health, and that only our approach can secure these important goals.

Also, and consistent with the tough approach, we should focus on the need for localities to spend more on drug enforcement (and also to prosecute drug users). Currently, local law enforcement agencies are spending only two to three percent annually on drugs. They must step that up, and prosecute more drug cases. Otherwise the federal government will be less effective in its central mission: national and international drug law enforcement. The Attorney General could announce a "pledge campaign," asking local law enforcement agencies (or local governments) to increase their drug spending by a certain (reasonably attainable) percentage. By the day of the announcement, we should have lined up "pledges" from several major cities, such as Los Angeles, Houston, and New York.

Obscenity. Here we must continue our focus on child pornography and obscenity and stress that these phenomena threaten the psychological health and physical safety of our children. The "combat zones" of our cities are service stations of the vice industry, magnets for pimps, prostitutes and drug dealers and staging grounds for street crime and violence. We must attack the idea that those trafficking in obscenity have a right to practice their trade. This is not an issue of rights but -- again -- one of public health and safety. We should aggressively push our new legislative package, stressing the child pornography portions and the forfeiture provisions. And we should encourage use of not only the obscenity statutes, but also public health statutes, building codes, public nuisance laws, and health and safety codes and liquor license rules.

AIDS. Here the point is that AIDS is not a civil rights or privacy issue, but one of public health and safety. While care must be taken to protect civil rights, we must take appropriately designed measures to protect communities against the threats posed by AIDS. We should make ~~periodic~~ reports on our four-point AIDS program (announced in the summer), and on any defensive litigation that holds off the privacy advocates who challenge AIDS testing.

Career Criminals. Repeat offenders are plainly a major threat to public safety. We should launch an offensive against career criminals based on the Armed Career Criminal Act and the Anti-Drug Abuse Act of 1986. The former provides a 15-year mandatory sentence, with no parole, for a defendant with three or more prior convictions for robbery or burglary, when the current offense involves possession of a firearm. The latter prescribes a mandatory minimum 10-year or 20-year sentence with a maximum of life imprisonment for drug traffickers with prior drug-related felony convictions. U.S. Attorneys again should be directed to focus on career criminals and ask for these sentences. When such sentences are handed down, we should advertise them -- through press releases and press conferences.

Prisons. Our federal system is overcrowded by a rate of 58 percent system-wide. The inmate population is growing at an average rate of 15 percent a year. The Department estimates that given current capacity and with only the additions envisioned by the administration's current plan, overcrowding will increase to at least 72 percent by 1997. The demand for prison space thus will rise, but so will the voices of those who say we need fewer prisons and more "alternatives" to incarceration. We must take the side of more prisons, and to polarize the issue we must attack those by name (such as Sen. Paul Simon) who take the other approach. We must stress why prisons are necessary by discussing retribution, deterrence, and incapacitation. Overall, of course, we must make the case that public safety demands more prisons.

Truth in the Courtroom. Here the point is to associate the search for truth with protecting public safety. The two go hand in hand. If you're against exclusionary rule reform, or Miranda reform, you're against truth in the courtroom, and you're against public safety. The issues should be defined in these broad terms, leaving the technical debates for brief writers and legislators. The purpose is to put the other side on the defensive.

Capital punishment. Here, too, we must associate capital punishment with public safety, with rationales for the death penalty being those of deterrence, retribution, and incapacitation (i.e., decapitation). We must drive home the point that to be against the death penalty is to deprive communities of an important shield against the most vicious criminals. The means for discussing capital punishment is our legislation.

Victims of Crime. Again, there is an association between victims and public safety: if you aren't concerned about and willing to support victims of crime, you don't really care about public safety. We should advertise the developments since 1982 in the states in respect to legislation mandating fair treatment of crime victims. Also, we should attack (here is confrontation) the Supreme Court decision last year in Booth v. Maryland, which denied the use of victim impact statements in only capital cases. And we should discuss the projects of our relatively new Office for Victims of Crime.

(g) Cooperate and consult regularly with the Small Business Administration with respect to the functions and duties described in paragraph (a) of this section;

(h) Review, evaluate and report to the Deputy Attorney General on the performance of organizational units of the Department in accomplishing the goals for utilization of small and disadvantaged businesses; and

(i) Prepare the Department's annual report to the Small Business Administration on the extent of participation by small and disadvantaged businesses in Department procurement contracts.

(28 U.S.C. 509 and 510; 15 U.S.C. 644(k))

[Order No. 906-80, 45 FR 52145, Aug. 6, 1980]

Subpart C-1—Office of the Associate Attorney General

§ 0.19 Associate Attorney General.

(a) The Associate Attorney General shall advise and assist the Attorney General and the Deputy Attorney General in formulating and implementing Departmental policies and programs pertaining to criminal matters. The Associate Attorney General shall also provide overall supervision and direction for the following organizational units: Criminal Division; Drug Enforcement Administration; Immigration and Naturalization Service; Executive Office for United States Attorneys; Bureau of Prisons; Federal Prison Industries, Inc.; Office of Pardon Attorney; Executive Office for Immigration Review; United States Marshals Service; and the United States National Central Bureau, INTERPOL. The United States Parole Commission is under the supervision of the Associate Attorney General for administrative purposes. In addition the Associate Attorney General shall:

(1) Exercise the power and authority vested in the Attorney General to take final action in matters pertaining to the employment, separation, and general administration of attorneys and law students in pay grades GS-15 and below in organizational units subject to his direction and of Assistant United States Attorneys and other attorneys to assist United States Attorneys when the public interest so requires and fixing their salaries.

(2) Perform such other duties as may be especially assigned from time to time by the Attorney General.

(3) Exercise the power and authority vested in the Attorney General to authorize the Director of the United States Marshals Service to deputize persons to perform the functions of a Deputy United States Marshal.

(b) The Associate Attorney General may redelegate the authority provided in paragraph (a)(1) of this section to the official in the Office of the Deputy Attorney General responsible for attorney personnel management.

(c) The Associate Attorney General is the Attorney General's designee for purposes of determining whether, under Part 39 of this title, a handicapped person can achieve the purpose of a program without fundamental changes in its nature, and whether an action would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. The Associate Attorney General may not redelegate this authority.

(28 U.S.C. 509, 510; 5 U.S.C. 301, and 8 U.S.C. 1103)

[Order No. 960-81, 46 FR 52341, Oct. 27, 1981, as amended by Order No. 998-83, 48 FR 8056, Feb. 25, 1983; Order No. 1047-84, 49 FR 6485, Feb. 22, 1984; Order No. 1106-85, 50 FR 36055, Sept. 5, 1985]

Subpart D—Office of the Solicitor General

§ 0.20 General functions.

The following-described matters are assigned to, and shall be conducted, handled, or supervised by, the Solicitor General, in consultation with each agency or official concerned:

(a) Conducting, or assigning and supervising, all Supreme Court cases, including appeals, petitions for and in opposition to certiorari, briefs and arguments, and, in accordance with § 0.163, settlement thereof.

(b) Determining whether, and to what extent, appeals will be taken by the Government to all appellate courts (including petitions for rehearing *en banc* and petitions to such

Office of the Assistant Attorney General

May 25, 1988

Mark H. Gitenstein, Esquire
Chief Counsel
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mark:

This responds to your letter of May 19, 1988, to Wm. Bradford Reynolds, Assistant Attorney General for Civil Rights, requesting that certain documents and information be provided to the Judiciary Committee by close of business yesterday prior to Mr. Reynolds's testimony scheduled for May 26. The information and documentation that you requested is attached.

Pursuant to an oral request from Committee Staff on May 24, we are also including copies of Mr. Reynolds's speeches since the last authorization hearing in March, 1987.

We regret any inconvience this delivery may cause the Committee. Had we known about your request earlier, especially in light of the fact that the hearing has been scheduled for well over a month, we would have been better able to respond in a timely fashion. However, we have acted as swiftly as possible under the circumstances. Mr. Reynolds, for example, was out of the Department at conferences on Friday, and again Monday and Tuesday until mid-afternoon, and had not had an opportunity to review the material being provided until his return.

We hope that the attached responds fully to your request. If.you have any further questions please do not hesitate to contact me.

Sincerely,

Thomas M. Boyd
Acting Assistant Attorney General

cc: Honorable Strom Thurmond

Enclosures

RESPONSE TO QUESTIONS AND REQUEST FOR INFORMATION FOR ASSISTANT ATTORNEY GENERAL WM. BRADFORD REYNOLDS

1. a. In general, we believe that, once a school district has achieved "unitary" status -- i.e., has eliminated all vestiges of illegal segregation -- dismissal of the case is appropriate. Obviously, there is no cut-and-dried correct way to tell when a given district has achieved unitary status; the inquiry must be made on a case-by-case basis. Let me describe in some detail, however, why we believe the districts in United States v. Georgia are likely candidates.

The Department's docket of education cases consists of several hundred cases which are nearly 20 years old. In Georgia, for example, our suit was originally filed on August 1, 1969 against the State of Georgia and 81 public school districts. The case is styled United States v. State of Georgia, et al., C.A. No. 12972 (N.D. Ga.). The Court entered a number of orders for the purpose of effecting desegregation in the named school districts, including a detailed regulatory injunction entered on December 17, 1969. On September 5, 1972, in compliance with directions given by the United States Court of Appeals for the Fifth Circuit, the Northern District issued an order adding as parties defendant each school district in the state and transferred over 47 of the public school districts involved in this case to the district court for the Middle District; the remainder of the school districts were transferred to the other two judicial districts.

On December 27, 1973, the State defendants filed a motion with this Court to have the case dismissed as to the State defendants or, in the alternative, to have an order entered "placing on an inactive docket those local county and city school systems within the Middle Judicial District which by virtue of compliance with all court orders have achieved and maintained a 'unitary status'. . . ." A similar order placing specified school districts on the inactive docket had been entered by the Northern District on June 23, 1973.

This Court approved on January 24, 1974, a consent order signed by counsel for plaintiff, plaintiff-intervenors, and for defendants, which stated that the specified school districts, including all school districts named in this caption, "have for three years assigned students to the public schools in accordance with the plans approved by the Northern District and have become 'unitary' in the sense required by the Supreme Court's decisions in Green v. County School Board, 391 U.S. 420 (1968), and Swann v. Board of Education, 402 U.S. 1 (1971)."

The consent order dissolved the detailed regulatory injunction issued by the Northern District on December 17, 1969, substituted a permanent injunction for each school district--setting out certain desegregative conduct requirements--and placed the named school districts on this Court's inactive docket, "subject to being reactivated on proper application by any party, or on the Court's motion, should it appear that further proceedings are necessary."

The detailed regulatory injunction against the state was also dissolved as it pertained to the school districts placed on the inactive docket and a permanent injunction was substituted. A similar order was entered in the Southern District on February 14, 1974.

Since 1974 there has been little, if any, activity in these cases. At the time these districts were reviewed by us for possible dismissal no complaints had been filed with the Department of Justice by any persons who alleged that racial discrimination was occurring in these districts. Under these facts, we believe that the school district would be entitled to a review to determine whether it has corrected the constitutional violations originally alleged by the government in its suit. If such a review reveals the district is in compliance with its orders and that the district has not engaged in any new discriminatory practices, we believe that the law is clear: court supervision should be terminated and the case should be dismissed. Thus, the Department's policy is that court supervision should terminated and a case dismissed, once a district has achieved unitary status. This means that any outstanding injunction should be dissolved.

This approach is consistent with the weight of the law, including a recent decision by Judge Acker in Lee et al., and United States and NEA v. Macon County Board of Education (N.D. Ala. 1988). We are attaching our most recent filing in the Georgia case, which outlines in greater detail the legal authority for our position. (See TAB A.)

Although one purpose of our review is to identify school districts which are eligible for dismissal, an equally important purpose is to identify districts which are not operating in compliance with their court orders. One Georgia district -- Merriwether -- initially considered was determined not to be eligible for dismissal at this time because we have received complaints against the district. We therefore reactivated the case and are now investigating the complaints.

b. As noted above, we believe that the law requires that a school case should be dismissed and the injunction dissolved once the district has achieved full unitary status. The process for getting a case dismissed has been initiated by: (1) the school district, (2) the United States, or (3) the Court. Most often the process for having a school district declared unitary (or having the case dismissed and the injunction dissolved) is initiated by the school district. However, the process is frequently initiated by the Court. For example, Judge Acker of the Northern District of Alabama recently issued a show cause order to the government and private plaintiffs regarding seven school districts and a junior college in Lee, supra. The order required the United States and the private plaintiffs to demonstrate why the case should not be "closed" (case dismissed and injunction dissolved) with respect to the seven school defendants. And as noted above Judge Acker "closed" the case with respect to Nunnelley Junior College in March 1988, after the United States and the private plaintiffs were unable to produce any evidence to show that Nunnelley was operating in noncompliance with its order.

Although the government has not usually initiated the legal process to dismiss a case, we believe the government has the obligation to do so, particularly in light of the fact that federal judges have seen the need to initiate the process where the government and the private plaintiffs have failed to do so. The law is clear that, once the dual school system has been successfully dismantled, full control of the system must be returned from the federal court to the local school board. There have been a number of cases where the government has agreed to the dismissal of school desegregation cases where the school districts involved have complied with the obligations of court orders and have sought dismissal of their cases. In the early 1980s, including prior to this administration, there were a number of cases in Alabama and some in Texas in which the school district was declared to be unitary and the case dismissed with a stipulation by the parties by which the school district agreed not to discriminate in various school operations. The case involving the Houston, Texas, school system was dismissed in a similar fashion. While these stipulations are enforceable in court, a new lawsuit would have to be filed. The dismissal of cases where the school district has moved to have the school district declared unitary and the case dismissed usually follows extensive investigation and negotiation with the school district, and dismissal is mutually agreed to in a consent order. Examples of such cases are: United States v. Board of Education of Jackson County, and the Board of Education of Jefferson City, C.A. No. 1287 (N.D. Ga.), dismissed September 1985; Lee v. Macon County Board of Education, C.A. No.5945-70-T (Dallas County, dismissed September 1983; Demopolis, dismissed December 1983); United States v. Hinds County School District, C.A. No. 4075, dismissed November 1984.

c. We did not communicate with the private plaintiffs prior to filing the stipulations in the Georgia cases

d. We did not receive any communications from school districts prior to filing the stipulations of dismissal, but it has been our general experience that school districts which have achieved unitary status would prefer to have their cases dismissed, and the districts were quite receptive when we contacted them. We note that, in spite of this initial receptivity, some of the districts have later shown reluctance to pursue dismissal at this time because of their fear that the private plaintiffs will engage them in extensive and costly litigation. These small districts have made clear, for instance, that they do not have the necessary financial and other resources answer extensive interrogatories asking for information dating back to 17 years ago.

e. We gathered and analyzed the most recent enrollment data for an initial group of 17 Georgia school districts operating under court order where the courts had previously declared the school district to be unitary, dissolved the regulatory injunction, entered a permanent injunction, and placed the case on the court's inactive docket. These 17 school districts are the only Georgia school districts operating under these permanent injunctions for which we could obtain the most recent enrollment information from OCR. The enrollment data for these districts was taken from the Fall 1986 OCR Survey of Elementary and Secondary Schools. The enrollment for nearly every individual school in all of the districts met the legal standard (+/- 10% or 20% deviation from the districtwide racial enrollment) normally applied by the courts.

Upon reviewing this information, we then contacted the superintendents of these 17 Georgia school districts and inquired whether each district desired to have its district considered for unitary status. We later contacted the remainder of the districts named in United States v. State of Georgia. Because we did not have updated enrollment data for this second group of districts, we requested in a letter that the districts provide enrollment and employment statistics. We are still gathering enrollment and faculty data from these other districts, many of which have indicated their willingness to have their cases dismissed.

With respect to the initial group of 17, we sent letters and proposed stipulations and orders to them. Eight of them returned the signed stipulations to us which we filed in early February. Three other school districts sent the stipulations directly to the court for filing, also in February. However, two of the districts are under the jurisdiction of the southern district, so they have been withdrawn from consideration and will be filed shortly in the southern district. Three other school districts returned the signed stipulations to us, but we have not yet filed these cases, hoping that we could resolve issues related the appropriateness of the extensive interrogatories filed on other districts by the private litigants.

Since we filed the stipulations, we have met with representatives of the NAACP-Legal Defense Fund, which represents the private litigants in the United States v. Georgia case, and other civil rights groups, including the NAACP. To accommodate some of the concerns these groups have expressed, our procedures now include contacting school districts and requesting extensive data, including student enrollment, faculty and administration statistics and other indicia of compliance with court orders and notifying LDF and the NAACP upon our initial contact with a school district. We recently followed this procedure in sending letters to 23 Alabama districts.

f. As noted previously, the Justice Department has not received complaints against these Georgia districts and this is a one of the primary reasons for seeking to dismiss these cases. For the initial group of 17 Georgia districts, we did obtain information from the Department of Education, Office for Civil Rights. The information which we obtained for initial group of 17 revealed that a number of complaints had been filed against these districts since 1983, but only one resulted in an actual finding by OCR of a violation, which required a remedial plan (apparently, the school district had used invalid "ability grouping" methods that resulted in unnecessary segregation of several classrooms). A number of the complaints involved handicap issues and therefore are not covered by the operative orders in the Georgia case.

g. To the best of my recollection, several meetings were held with staff to discuss the Georgia districts and the instructions on how to proceed were oral. There are no memoranda discussing how the districts were selected and what steps were to be followed. This was done by the staff pursuant to instructions from supervisory personnel. The reason for this is that the process which we have been following is so basic: reviewing districts which have already been declared unitary, which have not been involved in any legal activity for years, and against which we have received no complaints.

2. a. The following objections were interposed under §5 on grounds inter alia that the voting changes violate §2:

(1) Copiah County, Mississippi - Redistricting of supervisor districts; objection letter dated April 11, 1983

(2) Oktibbeha County, Mississippi - Redistricting of supervisor districts; objection letter dated June 17, 1983

(3) Halifax County, North Carolina - Readoption of the existing at-large method of election and increase in the number of county commissioners from five to six; objection letter dated May 16, 1984

b. There are other instances where we did not object to a voting change under §5, but noted in the preclearance letter that it may be violative of §2:

(1) Wilson County School District (Wilson County), North Carolina - §5 letter dated July 11, 1986, advised the school board that the at-large method of electing

the board may be violative of §2; lawsuit subsequently filed. United States v. Wilson County Board of Education, No. 86-88-CIV-5 (E.D.N.C.) (filed August 22, 1986).

(2) McComb Municipal Separate School District (Pike County), Mississippi - §5 letter dated May 26, 1987, advised the school district that the apparent malapportionment of election districts established for the election of school district trustees may be violative of §2; school district subsequently rectified the malapportionment voluntarily.

(3) Town of Maytown (Jefferson County), Alabama - §5 letter dated June 1, 1987, advised the town of a possible violation of §2 with respect to an annexation that encircled two predominantly black areas, thus foreclosing these two areas from annexing to any town other than Maytown, which had allegedly refused to annex these areas. The town is presently making plans to deannex territory around the two black areas to permit annexation by the city of Birmingham.

(4) Grenada Municipal Separate School District (Grenada County), Mississippi - §5 letter dated May 9, 1988, advised that the method of selecting the school board trustees may be violative of §2 because the method appears to be out of compliance with state law. No response to this letter has been received as yet.

c. In one instance, we precleared several voting changes and noted in the preclearance letter that an existing election feature, not before us for §5 review, may be violative of §2:

Pitt County, North Carolina - §5 letter dated July 22, 1986, advised the county commissioners that the existing method of election may be violative of §2. The county has since implemented a new election plan that was precleared on February 24, 1988.

d. Also in the course of our §5 review, we have identified §2 violations regarding elements of election plans that were not changes and thus were not before us for §5 review. As a direct result, we filed the following §2 lawsuits:

(1) United States v. City of Bessemer (N.D.Ala.) (filed April 10, 1984)

(2) United States v. City of Augusta, No. CV 187-004 (S.D.Ga.) (filed January 8, 1987)

(3) United States v. City of Roanoke, C.A. No. 87-V-97-E (M.D.Ala.) (filed February 2, 1987)

(4) United States v. City of Spartanburg, C.A. No. 7:87-1332-17 (D.S.C.) (filed May 26, 1987)

(5) United States v. Laurens County, South Carolina, No. 6-87-1817-3 (D.S.C.) (filed July 10, 1987).

(6) United States v. Bladen County Board of Education, No. 87-101-CIV-7 (E.D.N.C.) (filed October 21, 1987)

(7) United States v. Lenoir County, North Carolina, No. 87-105-CIV-4 (E.D.N.C.) (filed October 21, 1987)

(8) United States v. City of Aiken, No. 1:87-3135-6 (D.S.C.) (filed November 24, 1987).

(Examples of objection letters are attached at TAB B.)

3. a. A federal district court enjoined the voter purge efforts on September 24, 1986. The decision not to pursue the matter was based on internal deliberations, and memoranda from key staff. Copies of the internal deliberative memoranda were provided to the Committee under cover letter dated 11 December 1987, copy attached at TAB C.

b. There have been no communications, either oral or written, between division personnel and officers or employees of the Republican National Committee referring or relating to the inquiry, other than those provided to the Committee under the cover letter dated 11 December 1987, attached.

4. Information is provided in the notebook tabbed "D".

5. NOTE: The information requested in question number 5 is outside the scope of the subject budget authorization hearing. It is being provided, however, as a courtesy to Committee staff.

a. The time devoted to activities other than those within the responsibilities of the Assistant Attorney General for Civil Rights varies from day to day, week to week, and month to month. Accordingly, any percentage estimate is impossible to calculate. I can state that I spend whatever time it takes to accomplish the work to be done, and that a total estimate is much closer to an 80-hour work week than a 40-hour work week.

b. The matters outside the Civil Rights Division to which I have devoted a substantial amount of time include the following:

(1) Architectural and Transportation Barriers Compliance Board (ATBCB), both as Chair and as a Member;

(2) Drug-related initiatives;

(3) Justice Department Resources Board (DRB);

(4) Iran-Contra matters;

(5) Judicial confirmation process;

(6) Justice Department Strategic Planning Board (SPB);

(7) Department management-related issues;

(8) Immigration Reform Act (setting up Office of Special Counsel);

(9) Domestic Policy Council (DPC);

(10) Atlanta/Oakdale Prison uprising.

c. None.

d. The principal boards, commissions, and committees on which I have served are the following: ATBCB; Interagency Coordinating Council; DRB; SPB; DOJ Special Issues Coordinating Group. *See also* b., *supra*.

6. a. *United States Supreme Court*:

(1) *Corporation of Presiding Bishop* v. *Amos*, 106 S.CT. 2862 (1987)

(2) *United States* v. *Kozminski*, No. 86-2000 (pending)

b. *United States Courts of Appeal*:

(1) *Hammon* v. *Barry* (District of Columbia Firefighters), 826 F.2d 73 (D.C. Cir. 1987), petition for rehearing pending

(2) *United States* v. *Starrett City Assoc.*, 840 F.2d 1096 (2d Cir. 1988)

(3) *United States* v. *Texas Educ. Agency (Austin)*, 834 F.2d 1171 (5th Cir. 1987)

(Copies of briefs are included in the file tabbed "E".)

Senator KENNEDY. My time is expired.

Senator Specter.

Senator SPECTER. Senator Grassley has a time problem and I would be glad to yield to him, Mr. Chairman.

Senator KENNEDY. Senator Grassley.

Senator GRASSLEY. Thank you, Mr. Chairman. I do not have over 10 minutes of questioning, either.

You may not be aware of it, but last month this committee held hearings on the Department's management of defense procurement fraud, an issue you know that I am very concerned about.

We heard about a recent study by the General Accounting Office during that hearing that was very critical to the Department's performance in this area. Senator Proxmire and I have sponsored legislation that would provide additional targeted resources to the Department's efforts on these complex cases of defense procurement fraud.

Now, to aid us in this hearing, the hearing I was just referring to, and to comment on that legislation, we had requested the appearance of an assistant U.S. attorney from Virginia by the name of Joseph Fisher. We sought his views on the bill, not for an official DOJ position, but his views as a person with knowledge in the area of prosecution process and particularly as it related to defense procurement fraud.

His superiors at that time, just maybe 24 hours before he was supposed to appear, prevented his appearance. Now, I understand that each Justice Department, Republican and Democrat, and the Justice Department, no different than any executive branch agency, needs to speak with one voice when it comments on legislation. But I hope that you would appreciate, as a person just about to be Attorney General, that we in Congress have a need to get the best information we can from people who are closest to the facts.

So, in a very general way, not just specifically with Mr. Fisher, but could I get any sort of commitment from you? I guess I should not say "any sort of commitment." I would like to know that there is an effort here of you and people under you to cooperate with this committee's access to Department employees and information.

Mr. THORNBURGH. Surely. In a general way, and the only reason I say that is obviously you know these matters can take twists and turns, but my genuine desire is to cooperate, Senator Grassley, and I would hope that in most cases that kind of information or those kinds of witnesses can be made available to you.

Senator GRASSLEY. Governor, the committee has already approved the names of the Deputy Attorney General and the number three person in the Department, as well as the new head of the Criminal Division. Now, we have pending the nominations of several other top Justice officials, like the Assistant for Congressional Affairs, the Assistant for the Office of Legal Policy, and the Prosecutor here in the District of Columbia.

I take it that it is very important from your point of view as well as ours that we also act swiftly on these other individual nominations as well. Would you say that that is necessary, for you to perform your——

Mr. THORNBURGH. The only way to win the game is to have your full team on the field, Senator, and I think the sooner the better with respect to those nominations which have been made by the President and, as you point out, many have been reported out favorably by this committee.

Senator GRASSLEY. That concludes my questioning and I thank you very much and I look forward to that working with us to see that we get all the information we need to——

Mr. THORNBURGH. That is not to say we will not have our differences from time to time, but I assure you——

Senator GRASSLEY. Let us just not have very many.

Mr. THORNBURGH. All right.

Senator GRASSLEY. Maybe one last thing I want to ask. Do you think that the Pittsburgh Pirates are going to win the pennant? [Laughter.]

Mr. THORNBURGH. Why did you not start the hearings off with that question?

Senator GRASSLEY. Mr. Chairman, Senator Simon, I am done.

Senator SIMON [presiding]. Thank you, Senator Grassley.

Governor, in going over things you have written and some speeches you have made, I——

Mr. THORNBURGH. I have not written any books, though, Senator, I am sorry to say. I cannot match you in that regard.

Senator SIMON. You have a book, just compile everything you have put together.

Mr. THORNBURGH. I was a little embarrassed when the form said "please give the publishers of any books that you have written," I thought well, you have come to the wrong guy.

Senator SIMON. Well, you will do that in the future. [Laughter.]

I read with great interest and approval, I might add, remarks you made when you were a U.S. attorney, a speech to the Building Owners and Managers Association of Pittsburgh, "Mother's Milk Gone Sour: The Problems of Political Financing." And if I may just quote a few sentences: "the interconnection between campaign contributions and political favors, the award of governmental positions and lucrative contracts has brought into play the full panoply," and you go on there.

"When you get down to consider the money it takes to get people into office and to support them once there, you are getting very close to the heart of the problem of our political system." Again, these are all taken out of context now, but I do not think unfairly.

". . . the fact of the matter is that we have fallen on bad times when it comes to the juxtaposition of the dollar sign upon our existing political structures," and if I may comment to my Senate colleague here, it is very interesting that we changed the Constitution to elect U.S. Senators by the people, because in the State of Illinois it was discovered that a man by the name of Lorimer had spent $100,000 to influence the State Legislature to get elected to the U.S. Senate, and the people of the Nation were appalled that anyone would spend $100,000 to get to the U.S. Senate and they wanted to take that power of money away and give it to the people, and I do not need to tell you what has happened since.

Anyway, as I read over this material, and it is excellent, and I ask you this question personally, not on behalf of the administration or anyone else: We have changed the system on the Presidential races so that when we fill out our income tax form, we check off a box, and after George Bush is nominated and Michael Dukakas is nominated, each have the same amount of money to spend, and we do not have this business of presidential candidates going around, at least as much as we used to, begging for money, and I believe that is an improvement.

It has been suggested that if we are really going to seriously look at our system of how we finance campaigns for the Senate and the House, that we ought to be doing the same, another box, a checkoff, so that once a person is nominated in Pennsylvania or Illinois or anywhere else, you would have "*x*" dollars to spend, no more. Do you have any reaction to that? Obviously, you are a person who has looked at this whole question of financing campaigns much more seriously than most people have.

Mr. THORNBURGH. Well, I do not know, as you point out, that this has much to do with my perspective as Attorney General and I have some views which are purely personal views. I am not in favor of public financing of political campaigns. I see no reason why the taxpayers should subsidize those of us who aspire to public office. For those of us who are not people of great wealth, it is difficult, to be sure, to raise funds to carry on a campaign in a major State like Illinois or Pennsylvania, but it seems to me that part of the component of a candidate's appeal has to be that people who are able to support their ambition for public office are willing to provide financial contributions and that kind of competition is reflective of the kind of appeal that an individual candidate has, so long as—and I believe that speech concentrates in this area, because at the time there were no comprehensive reporting requirements in Pennsylvania—so long as there is a full and complete disclosure of the sources of that financing and stringent penalties for failure to accurately report the sources of that financing, which may in turn become an issue in the campaign.

From the point of view of the amount of funding that is necessary, I have for a long time been a supporter of the view that your colleague, Senator Rudman, is now championing with regard to reducing the costs of political campaigning, most of the funding for which now goes in a major State-wide campaign, at least, to television advertising, and that a very careful examination ought to be given to requiring television networks and stations to provide at low cost or at no cost time for legitimate, bona fide candidates to express their views and to carry their message to the public.

It seems to me that by attacking this problem on the cost side by some such mechanism, you are not impinging upon the healthy competition that exists between candidates for voter support and financial support, and depriving people of the opportunity to, as we love to say, put their money where their mouth is.

I think that if that kind of reform were to be forthcoming, which would reduce the cost aspect of a major campaign, that you would have the goal that you and I, I think, both share reached in a way that is more consistent with the traditions of American politics.

Now, that is a personal view, it is not one that I would be prepared to discourse on at length, but that is responsive to your question.

Senator SIMON. I understand and I asked for your personal view, because obviously you have reflected upon it. And if I can just add my own personal view, I agree with the latter part of your statement wholeheartedly and wholeheartedly disagree with the first part of your statement.

Mr. THORNBURGH. That is why you and I are here.

Senator SIMON. I think we have to recognize that the confluence of political contributions that come very, very close to—they are not bribery, but they are—you are going to deal a lot with corruption—they are skirting that, and I think we have to recognize that we have a major problem in our country.

Let me ask another question. I have read the statement, you may have also, by your Pennsylvania Auditor General Don Bailey, and he says, "Mr. Thornburgh pursued a pre-planned policy of subverting the intent and purpose of substantive law through systematic and organized efforts at nonenforcement." It covers a whole list of things here. Any comments?

Mr. THORNBURGH. I hate to tell a Senator from Illinois about how partisan my home State is, but perhaps you will indulge me for a moment to tell you that we take our politics very seriously in Pennsylvania. It is generally hard-fought, no punches pulled.

Mr. Bailey is a Democrat who is in a very tough reelection campaign, being opposed by a very popular Republican woman candidate. Last week, Mr. Bailey's chief deputy was sentenced to 4 years in a Federal prison for violation of the Federal criminal statutes, and I think he is feeling a little bit of the heat.

I have read his so-called charges, and they make no sense whatsoever to me, and I categorically deny the statement that you have quoted to me, which I, you might understand, underscored myself in my own reading of his statement. I think it is a political charge and I would ask that the committee treat it as such.

Senator SIMON. I gather you are not supporting him for reelection. [Laughter.]

In fairness to Mr. Bailey, let me just enter his full statement in the record, if I may, Mr. Chairman.

[The material furnished by Senator Simon follows:]

Office of the Attorney General
Washington, D.C. 20530

22 February 1988

MEMORANDUM FOR HEADS OF DEPARTMENT COMPONENTS

FROM: Wm. Bradford Reynolds WBR
Assistant Attorney General and
Counselor to the Attorney General

Pursuant to the discussion at Thursday's General Management meeting concerning Department strategy for the remainder of the administration, I am attaching a statement of themes for your review. Please give consideration to ways in which your activities can highlight and reinforce these themes, and direct comments or questions to me.

A STRATEGY FOR THE REMAINING MONTHS

Here is a statement of theme:

"Particularly as the "baby boom" generation becomes a generation of young parents, Americans today are paying more and more attention to the quality of life in their communities. And almost every major issue they must deal with -- such as drugs, obscenity and AIDS -- involves public health or public safety or both. It is time we directed our efforts toward improving the public health and safety of our communities."

In pushing this theme, it is necessary that we state clearly and often the character of the various issues -- i.e., that they are public health or safety issues. We must define them as such, and insist on the definition, in order to keep the debate on our terms. **In addition, we must polarize the debate. We must not seek "consensus," we must confront.** Of course, we must confront sensibly, in ways designed to win the debate and further our agenda. What follows is an issue-by-issue analysis that where possible proposes means of polarization.

Drugs. Overall, we should send the message that there are two ways to approach drugs: the soft, easy way that emphasizes drug treatment and rehabilitation versus the hard, tough approach that emphasizes strong law enforcement measures and drug testing. Naturally, we favor the latter.

To show our seriousness, we should develop and implement a law enforcement strategy that would prosecute users under provisions enacted in the 1986 legislation, and we should continue to implement drug testing in the Department and the executive branch generally, while defending drug testing in the courts. The tough approach would excite the drug libertarians who say drugs should be a matter of private choice; this in turn would allow us to show how such a view threatens public safety and public health, and that only our approach can secure these important goals.

Also, and consistent with the tough approach, we should focus on the need for localities to spend more on drug enforcement (and also to prosecute drug users). Currently, local law enforcement agencies are spending only two to three percent annually on drugs. They must step that up, and prosecute more drug cases. Otherwise the federal government will be less effective in its central mission: national and international drug law enforcement. The Attorney General could announce a "pledge campaign," asking local law enforcement agencies (or local governments) to increase their drug spending by a certain (reasonably attainable) percentage. By the day of the announcement, we should have lined up "pledges" from several major cities, such as Los Angeles, Houston, and New York.

Obscenity. Here we must continue our focus on child pornography and obscenity and stress that these phenomena threaten the psychological health and physical safety of our children. The "combat zones" of our cities are service stations of the vice industry, magnets for pimps, prostitutes and drug dealers and staging grounds for street crime and violence. We must attack the idea that those trafficking in obscenity have a right to practice their trade. This is not an issue of rights but -- again -- one of public health and safety. We should aggressively push our new legislative package, stressing the child pornography portions and the forfeiture provisions. And we should encourage use of not only the obscenity statutes, but also public health statutes, building codes, public nuisance laws, and health and safety codes and liquor license rules.

AIDS. Here the point is that AIDS is not a civil rights or privacy issue, but one of public health and safety. While care must be taken to protect civil rights, we must take appropriately designed measures to protect communities against the threats posed by AIDS. We should make periodic reports on our four-point AIDS program (announced in the summer), and on any defensive litigation that holds off the privacy advocates who challenge AIDS testing.

Career Criminals. Repeat offenders are plainly a major threat to public safety. We should launch an offensive against career criminals based on the Armed Career Criminal Act and the Anti-Drug Abuse Act of 1986. The former provides a 15-year mandatory sentence, with no parole, for a defendant with three or more prior convictions for robbery or burglary, when the current offense involves possession of a firearm. The latter prescribes a mandatory minimum 10-year or 20-year sentence with a maximum life imprisonment for drug traffickers with prior drug-related felony convictions. U.S. Attorneys again should be directed to focus on career criminals and ask for these sentences. When suc sentences are handed down, we should advertise them -- through press releases and press conferences.

Prisons. Our federal system is overcrowded by a rate of 5 percent system-wide. The inmate population is growing at an average rate of 15 percent a year. The Department estimates tha given current capacity and with only the additions envisioned by the administration's current plan, overcrowding will increase to at least 72 percent by 1997. The demand for prison space thus will rise, but so will the voices of those who say we need fewer prisons and more "alternatives" to incarceration. **We must take the side of more prisons, and to polarize the issue we must attack those by name (such as Sen. Paul Simon) who take the othe approach.** We must stress why prisons are necessary by discussin retribution, deterrence, and incapacitation. Overall, of course we must make the case that public safety demands more prisons.

Truth in the Courtroom. Here the point is to associate the search for truth with protecting public safety. The two go hand in hand. If you're against exclusionary rule reform, or Miranda reform, you're against truth in the courtroom, and you're against public safety. The issues should be defined in these broad terms, leaving the technical debates for brief writers and legislators. The purpose is to put the other side on the defensive.

Capital punishment. Here, too, we must associate capital punishment with public safety, with rationales for the death penalty being those of deterrence, retribution, and incapacitation (i.e., decapitation). We must drive home the point that to be against the death penalty is to deprive communities of an important shield against the most vicious criminals. The means for discussing capital punishment is our legislation.

Victims of Crime.. Again, there is an association between victims and public safety: if you aren't concerned about and willing to support victims of crime, you don't really care about public safety. We should advertise the developments since 1982 in the states in respect to legislation mandating fair treatment of crime victims. Also, we should attack (here is confrontation) the Supreme Court decision last year in Booth v. Maryland, which denied the use of victim impact statements in only capital cases. And we should discuss the projects of our relatively new Office for Victims of Crime.

"MOTHER'S MILK GONE SOUR:
THE PROBLEMS OF POLITICAL FINANCING"

REMARKS BY RICHARD L. THORNBURGH
UNITED STATES ATTORNEY FOR WESTERN PENNSYLVANIA

TO

THE ANNUAL AWARDS BANQUET OF THE BUILDING
OWNERS AND MANAGERS ASSOCIATION
OF PITTSBURGH

LeMONT RESTAURANT
PITTSBURGH, PENNSYLVANIA

MONDAY, NOVEMBER 11, 1974
7:30 P.M.

Last week saw the climax of the first post-Watergate election campaign. One of the most prevalent post-Watergate issues is that of political financing and it attracted a lot of attention in this year's campaigns. Surely, as the new Congress and various state legislatures convene in January, much more attention will be given to this issue as part of the national effort to restore the people's faith in the integrity of our governmental process.

"Money," California political boss Jesse Unruh was reputed to have observed in the 1960s, "is the mother's milk of politics." Whether this observation overstates the case or not, it is clear that this particular mother's milk has gone sour. And the people want it restored to Grade A pasteurized.

While much attention has been focused on the political problems arising from this phenomenon, it has been the criminal justice process which has served to highlight many of these problems -- through relentless investigation and prosecution of cases involving violations of the campaign funding laws already on the books.

In addition, the interconnection between campaign contributions and political "favors", the award of governmental positions and lucrative contracts has brought into play the full panoply of Federal income tax, bribery, extortion, mail fraud and interstate racketeering statutes -- with many notable convictions already resulting and more, no doubt, to come.

Against this backdrop, I would like to talk to you tonight about some of the problems inherent in the mechanisms that we have devised for financing political campaigns. There is, of course, a great deal of overlap between this particular subject and most of the other issues presently in the spotlight in the aftermath of Watergate and its state and local counterparts. For when you get down to considering the money it takes to get people into office and to support them once there, you are getting very close to the heart of the problem of our political system. Most of what has been conveyed to us almost incessantly via the airways and newsprint over the last couple of years relates to this troublesome area.

While I may find myself in a minority I think that, when all is said and done, all of the investigations, prosecutions, leaks, rumors, hearsay and the like which began with that fateful break-in of June, 1972, may well turn out to be a productive watershed in our political

LORIMER CASE = $100,000

development. I am essentially optimistic about the long range effect of the shock waves following the Watergate affair, because I think for the first time -- perhaps ever -- the American citizenry has been forced to focus its attention on the institutions that we have devised for governing ourselves and for determining who governs us -- how they get into office, and how they conduct and comport themselves once in office.

If the careful scrutiny that can result from this parade of horrors results in some productive change, some constructive tinkering with our system, we will have gotten off to a good start on the second 200 years of this United States of America.

In the meantime, the fact of the matter is that we have fallen on bad times when it comes to the juxtaposition of the dollar sign upon our existing political structures and, at the risk of laboring the obvious, I would like to review the bidding in that respect a little bit with you tonight. Some of my commentary is obviously based on my service as a prosecutor for the Federal Government with respect to criminal offenses. Some of it is based on a losing political campaign that I was involved in myself more years ago than I would like to admit. Some of it is based on the perceptions that all of us have developed by watching the unfolding drama of recent events in Washington and at state and local levels.

It used to be the problem of money in politics was a much simpler proposition because, in fact, up until recent years there was such a thing as literally "buying" votes. Wheelbarrows full of dollar bills were taken into controlled wards in most inner cities and disbursed through a variety of schemes to literally purchase the votes of those people who went to the polls. The big city machines that grew up during the late 19th and early 20th century relied upon the dollar as well to provide the hams and turkeys delivered at holiday time in exchange for political fealty to the reigning political machine.

Now, as the electorate has become more sophisticated, the techniques of using money in political campaigns have kept pace. The level of education and perception of today's electorate is increasing by leaps and bounds. Indeed, in most metropolitan areas, the inner city wards which used to be the controlled wards are no longer the dominant centers of population. The suburbs have become the real battleground of American politics in the 70's and promise to continue to be so for a considerable period of time to come.

With this change in focus has come a change in the technique of using the political dollar. No more do we have the crass and obvious palm-crossing that was in vogue during the era that Lincoln Steffens wrote about in the "Shame of the Cities". Today we have an electronic age assault on our electorates -- and the costs have gone higher and higher.

Where does today's campaign dollar go? Increasingly, of course, it goes into what we have broadly come to call "the media". Huge amounts of money are spent for radio, television and newspaper advertising. It also goes into sophisticated game plans that are plotted out for nearly every modern candidate -- profiling communities, charting them with the use of the computer in terms of demographics and the particular issues that are hoped to be relevant to particular neighborhoods.

This sophistication that politics has borrowed in increasing measure from the marketing community commands a high price. In addition, increased use of paid professionals, either as consultants or as staff to develop the volunteer cadres that are necessary to use in reaching people on a face-to-face, hand-to-hand basis in getting the candidate's message out, has upped the ante further.

All of these things, of course, cost more now than they did five or ten years ago so that the built-in increase of inflation adds its bit to the burgeoning cost of today's political effort as well.

Where does the money come from? It's the rare candidate who can do what a Nelson Rockefeller could do, that is, finance the large part of his campaign out of his own pocket either in the form of expenditures or loans to be paid back in the event of a victory.

We've learned from the playing out of the story of the 1972 presidential story where campaign money comes from at the national level: The lion's share of those contributions come from wealthy individuals some of whom, as you know, contributed upwards to and in excess of a million dollars to presidential candidates in 1972. Business executives, through a variety of arrangements, were found to have contributed corporate funds in their own names in violation of the former Federal Corrupt Practice Act and the new election laws. A considerable amount of funding still goes into presidential level campaigns from labor union fronts -- legitimate fronts -- for although it is illegal for unions themselves to contribute out of dues funds they have for many years utilized committees for so-called political education to pour millions of dollars into presidential and other campaigns.

An unprecedented number of schemes were devised to launder and conceal the huge avalanche of money that went into the 1972 campaign -- a total amount which for presidential, senatorial and congressional campaigns -- reached $110 million. You can imagine the degree of ingenuity that was used in connecting up the donors of those amounts with donees of all parties!

At the state level, different sources are utilized. In most states, and Pennsylvania is no exception, contractors with the state -- particularly for architectural and engineering services which are awarded on a non-competitive bid basis -- form the largest pool for contributions to state party mechanisms as well as individual campaigns.

For example, in Pennsylvania we have under investigation at the present time a scheme whereby a preferred list of architects and engineers is alleged to have been created by the General State Authority -- a list that, in effect, has to be "bought into" -- whereupon contracts are alleged to be let to favored architects and engineers on a negotiated basis. Built into each contract is alleged to be an amount varying between 5 and 15% which is systematically kicked back either to the two political parties or to designated candidates at the direction of those persons who control the contract-letting mechanism for the Authority. This particular technique is alleged to have been in effect for a number of years. If so, it constitutes a very smooth functioning, but hidden, way of having the public pick up the cost for political activities through the higher prices they are obliged to pay for the architectural and engineering services in question.

It may well be that these practices do not violate existing laws. That is the purpose of the investigation that is underway now by our office and by legislative committees which are examining whether additional laws are necessary to deal with these techniques. Whether illegal or not, however, I think the practice should give some pause to any taxpayer, who is the ultimate donor of these kicked-back amounts, as to whether or not he should be dragooned into paying for candidates and party policies which he has no direct voice in determining. Few people really realize that we may have had, through this mechanism, de facto public financing of campaigns in Pennsylvania for many years in spite of the absence of any legal sanction for it.

Finally, at the local level, campaign contributions become a bit murkier. It is here that one finds the influence of the organized crime syndicates rearing its particular ugly head. The Advisory Commission on Criminal Justice Goals and Standards in a comprehensive report rendered last year estimated that the rackets contribute about 15% of the cost of state and local -- and particularly local -- election contributions. This amounted to some $20 million throughout the nation in 1968.

The reason that racketeering money finds its way into the local election is that this is where, for their purposes, "the rubber hits the road." It is the local prosecutor, the local policeman, the local criminal justice system which is the first contact point for the businesses of organized crime -- illegal gambling, narcotics, loan sharking and the like. And it is worth plenty to purchase "protection" through contributions to political candidates -- often of both parties -- for sensitive positions in local law enforcement.

The techniques of avoiding present laws at all three levels -- laws which are more loophole than law when they are carefully examined -- have been perfected over the years by those with an interest in the system.

The main obstacle to effectively informing the public, by way of such disclosure laws as exist, is the use of cash. Cash is extremely difficult to trace. Cash leaves no paper trail. Cash, from the days where money was actually paid out in the wards, has literally been the favored coin of the political realm. There are many means utilized to convert otherwise traceable contributions into cash, but, however generated, it is cash which heightens the gleam in the political manager's eye.

I referred previously to the technique of utilizing corporate officers as conduits for what would otherwise be illegal contributions by corporations. The most frequently used of these methods is providing a bonus or some other manner of reimbursement to a corporate officer who then appears on the campaign list as John Doe, Executive, donating $2,000 to a particular campaign when in fact it came from his employer.

Phony donors can also be used to hide the source of particular contributions. If Al Capone, for example, were to have contributed to the candidacy of the Mayor of Chicago in his own name, it might not have enhanced his candidate's chances if the public were to see on a report that Al Capone, in fact, gave $50,000 to a particular candidate. If, however, by the use of a bunch of John and Mary Does scrupulously culled from the voting list and listed as donors of $500 or $1000 apiece, that contribution can be effectively hidden, who is the wiser?

Services are also provided by labor unions and corporations to particular candidates as a further means of skirting the law. You will no doubt recall the hullabaloo in several recent congressional elections over the immense number of labor union functionaries who showed up to carry out the day-by-day tasks of the election. Those in-kind and service contributions never show up on the reports that are filed with state and local authorities.

Similarly, unions and corporations can utilize phony billing arrangements whereby they will pay, for example, for 20,000 political brochures for candidate "X" under the guise of advertising materials which they purchased for themselves. An invoice from the printer to the company will be for "advertising material" and unless one digs deeply beneath the surface one never uncovers the use of this kind of a subterfuge.

Kickbacks from those who engage in contracting with public authorities appear at all levels. Those who contract with the authorities frequently include a little bit "on the top" that they can then return to the contracting party or his designee as a political contribution.

Finally, there is the technique of the bogus committee. While we may have seen the end of this particular gimmick, it came to its fullest bloom in the 1972 election campaign. Committees, say the Good Government Committees, number 1 through 300, may be set up strictly to provide a receptacle for donors who do not want to be identified with a particular candidate directly. It may also suit the purpose of a donor who wishes to give more than $3,000 to a particular campaign without incurring Federal gift tax consequences. Thus, if someone wants to give $100,000 he would write 33 separate checks for roughly $3,000 apiece, made payable to each of 33 separate committees set up for this purpose. You will recall that this mechanism served several large donors who donated a million dollars or so to Mr. Nixon's campaign in 1972. By recent ruling of the Internal Revenue Service this practice probably cannot be utilized in the future because it will be the aggregate amount of the gift that will be examined for tax purposes.

So much for the problems. Their solution, of course, is what is being grappled with at all levels of government at the present time. I would like, however, to offer some thoughts and solutions that I think make sense and discuss some that I don't think make much sense.

Basically, the problem is a classic business problem -- a problem of economics. You must either reduce the cost of political campaigns or you must increase the amount available -- in the clean sense -- to those people who are spending the money.

First of all, I must plead, as a law enforcement official, for effective laws that will at least inform us of where this money is coming from and where it goes so that the process can be policed. Most of the abuses that I have catalogued for you tonight are aimed at keeping the true picture of the election financing process from the public so that they may be bambooozled into uninformed voting on bases that don't relate to the possible corruption of the candidate or the possible advent of special interests into the halls of government through election contributions.

What is needed in all states, as well as at the Federal level, is an election financing law modeled on the Florida "who gave it -- who got it" law which has been in effect now for over 20 years. This would require the full and complete disclosure of actual donors in a way that their donations could be verified, that is, not just J. Smith from Pennsylvania, but John G. Smith, 820 Main Street, Sharpsburg -- listed in a manner that could be verified and checked.

On the one side -- the "who got it" side -- this would require the filing by each political candidate and each committee of a list of contributions and expenditures in full and complete form. In addition, on the "who gave it" side, there should be a requirement that donors who give in excess of a specified amount, perhaps $500 is a decent break even point, be required to file a statement with respect to the objects of their beneficence.

The need for both of these is clear, it seems to me, when one considers the monumental job of verification that is involved. With the use of present-day computer capability one could easily take the two lists and see where there were reports out of phase. Thus, if J. Smith reported giving $5,000 to Dick Thornburgh and Dick Thornburgh did not report getting $5,000 from J. Smith, somebody is going to be inquisitive. And somebody better have the answer. With that kind of double checking, and a minimum of detail work on the higher level contributions -- those from $500 up -- we could go a long way towards ferreting out major abuses.

In addition, the timeliness of filing is important. It doesn't do the electorate much good to find out after they have returned, for example, a United States Senator to a 6-year term to see that Al Capone did, in fact, finance his whole campaign. Timely filing means that reporting must be carried out periodically through the campaign before the election with a final wrap-up report after the election.

Opportunities for abuse would still exist, to be sure. There could be a bunching of illegal contributions or questionable contributions in the closing days of the campaign, but there would still be a significant incentive for each candidate to acquaint the electorate during the campaign with the sources of income upon which he relies lest his opponent beat him to the punch. Such requirements, coupled with strong criminal sanctions for failure to report properly would be a real inducement to laying the record out for the public to see. If the public, in fact, does not care where a candidate derives his financial support, once disclosed, then they will only get the government they deserve.

I do not see the wisdom of any upper limit on general campaign spending or any minimum public contribution to a particular candidate. I think we have to accept the fact that some individuals can attract more in the way of financial support than others just as some may attract more voting support than their opponents. This is a fact of life, however unpleasant it may be for unpopular candidates. To handicap those with appeal seems unjust. Public subsidy for those with little or no appeal seems equally unwise.

Cash contributions should be outlawed completely. Bank accounts should be required to be established and utilized by both candidates and committees so that a paper trail of contributions is left for all to see -- particularly those who are involved in investigating after the election or following up on allegations of fraud.

One additional matter that might be useful is being used in Illinois today -- the disclosure by those who contract with the state of the political contributions that they have made during a particular period of time. This could be an effort inhibiting factor on the type of kickback arrangement that I mentioned earlier.

All of the foregoing are pointed towards informing the public and perhaps cutting down on the amount of contributions that come from particular sources. There is also the matter of reducing costs. Here we ought to give some very serious thought to, in particular, the media area where expenditures can be reasonably well documented because of record-keeping requirements. Putting a generous, but nonetheless finite, upper limit on expenditures that can be made for campaign advertising would be of aid. There should also be a guarantee of access to the media, particularly the electronic media -- television and radio -- at no cost on a limited basis to all bonafide political candidates. The use in Federal campaigns of some kind of either free or reduced-rate mailing should also be implemented to counteract the free mailing privilege which exists for congressmen and senators and which has been so often abused.

One of the things that we should have in the back of our mind, in addition to removing corruptive influences, is the equalizing of the race between the incumbent and the candidate who seeks to unhorse him. Today, particularly in a congressional or senatorial race, the incumbent has so many built-in advantages in dealing with an opponent that the chance of loss is extremely slim. The advantage of incumbency is magnified by access to the news media on a controlled basis -- announcing a new dam or road project, coupled with the use of free mailing privileges and those phonied-up capitol backgrounds that are provided for TV and radio taping facilities.

Finally, with respect to those candidates who are successful, the time is long overdue when full and complete disclosure of finances and assets and liabilities of those in public office should be mandated. This is more or less of a follow up to the problem of campaign financing, but it partakes of the same problem. One is unable to determine or ferret out whether conflicts of interest exist with respect to public officials if one does not have the record in front of him of what opportunities for conflict of interest may exist.

If, on the one hand, the bulk of an individual's assets are grouped in a particular industry the public ought to know that when they read that he also votes, consistently, a line particularly favorable to that industry. Similarly, if on the liability side, an individual is heavily in debt to particular interests or individuals, his voting record ought to be examined in connection with that.

The cry that this would be some kind of an invasion of privacy (which used to be raised in the 60's) is by now reduced to a mere whisper.

As a personal matter I recall running for the Congress in 1966 and making a full and complete disclosure of my assets, liabilities and income. I called upon my opponent, a wealthy incumbent, to do the same and he was shocked. It was as if I had disrupted a quiet dinner party by stamping my feet on the table. It just wasn't done -- it was impolite -- it was frowned upon and it hurt him to the quick. But that kind of response to a demand for public disclosure of assets and liabilities would fall on deaf ears today. I expect that there will be more and more disclosure laws enacted to cover candidates as well as those holding public office.

So there you have my thoughts. None of the above is a panacea for the ills which infect our body politic. But I honestly feel that many of these ills derive from the runaway problem of political finances. While money is surely not the root of all evil, it may well be that the best way to begin the process of restoring integrity to our political process is to face up squarely to the problems inherent in political financing and the means whereby politicians gain and hold high office in this country.

I hope my observations in this regard constitute a constructive addition to this process.

# # #

STATEMENT BY DON BAILEY, AUDITOR GENERAL
COMMONWEALTH OF PENNSYLVANIA

BEFORE THE UNITED STATES SENATE JUDICIARY COMMITTEE
IN RE: RICHARD THORNBURGH'S APPOINTMENT TO
THE OFFICE OF ATTORNEY GENERAL OF THE UNITED STATES

I appreciate the opportunity to present this statement to the Committee, though my views are probably in a minority. As a former member of Congress, I am familiar with the need for a complete and thorough review of important public matters. In that regard, like most Americans, I desire a leadership change in the U.S. Attorney General's office. But I cannot recommend that you confirm Mr. Thornburgh's appointment as President Reagan wishes. I do, however, recommend that you consider very seriously the steps that you are taking, much as you did with your evaluation of Mr. Bork. While I do not suggest that Mr. Thornburgh is a candidate for criminal charges, now or in the future, I do suggest that there are, at least, very serious questions of his sincerity when it comes to enforcing law or policy with which he may not agree philosophically. Incidentally, I realize how unpopular my position truly is. I also realize, given the statements already made by many members of this Committee and the universal chorus of support I've heard echoed by the press, that this Committee's approval of Mr. Thornburgh is a forgone conclusion. But I have an oath of office to execute, a duty to perform and a public responsibility that requires the presentation of information in my possession to be placed on the public record. By virtue of my official responsibilities as Auditor General of Pennsylvania, I have post-expenditure audit authority and responsibility to examine Commonwealth operations. I also have an Investigations Bureau with authority to examine, in detail, all aspects of state government spending functions.

As a result of routine and special audits, it has become clear that, on numerous occasions, Mr. Thornburgh pursued a preplanned policy of subverting the intent and purpose of substantive law through systematic and organized efforts at nonenforcement. There are additional matters, some of which I will address in conclusion, of which Mr. Thornburgh is well aware, that are also of concern to the Department of the Auditor General. For brevity, I have enclosed two audits that speak for themselves. Please review the "Findings and Recommendations" sections (attached) and read the reports in toto, if you so desire. These reports address two areas of vital concern to the public that required a good faith effort at obeying and yes -- enforcing the law. These two cases do not stand alone. They merely involve a more obvious disregard of clear responsibility on a larger scale than do others.

To be specific, allow me to summarize the effects and impact, and recount some of the history behind the information contained in the Department of Labor and Industry audit, which was enclosed for your benefit, and which I hope you and your staff have reviewed.

To anticipate questions or explanations, let me emphasize that the decision not to properly staff tax collection operations was not and could not have been negligent. It was intentional. Let me also emphasize that Dick Thornburgh personally was aware of Pennsylvania's commitment to the expeditious and honest implementation of the then new Federal Unemployment Loan Fund reforms because he was the progenitor of it. I have intimate knowledge of this matter because, as Pennsylvania's majority member on the Ways and Means Committee, I, with the help of capable staff and a supportive Chairman in Dan Rostenkowski, engineered the reforms personally. The changes were highly favorable to Pennsylvania. But there was an agreement to help Pennsylvania avoid a catastrophe in return for a diligent and honest effort to repay the loans. Dick Thornburgh personally came to my office and thanked me for my efforts since we had been opposed by a different plan supported by Senator John Heinz. At that meeting, I re-emphasized my commitment, which was agreed to and supported personally by the Governor, to support the effort to repay the loans. He strongly stated his commitment to solve this problem, thanked me profusely and left. He returned to Pennsylvania and immediately begin the emasculation of this agreement.

As of this year, Pennsylvania is the only state which stands to pay a penalty for non-repayment of its loans to the federal government. Our new Governor is struggling to do the job that his predecessor failed to do. But what makes this matter rise to the level of a concern affecting your Committee was the nature and manner in which the law was not enforced, not the deficit figures themselves.

I am referring, in particular, to delinquent collections. The intention to avoid enforcement was so blatant that money, earmarked by the federal government to aid in the collection of delinquent UC taxes, was improperly spent. In fact, $4.9 million of the money has not been accounted for as of this writing. We are still looking. These matters began to surface during Mr. Thornburgh's administration and were ignored.

The second major example of purposeful disregard for the enforcement of substantive law was revealed in our audit of Pennsylvania's Department of Environmental Resources (a summary of Findings and Recommendations is attached).

Today, Pennsylvania faces a grave trash disposal problem. The cruel subterfuge that, by design, avoided the dictates of sound law in the public interest raises serious questions about the faith and credit with which Mr. Thornburgh would pursue his new duties. Would he here avoid and there stress the enforcement of law based upon his (or the President's) personal predilection?

While some discretion in law enforcement or in policy emphasis would be expected (for example, the war on drugs), given the limited resources available to any government agency, the examples I have cited go far beyond reasonable limits. They demonstrate a consistent and persistent effort, conducted over a period of years, to undermine the intent and purpose of clearly defined legislative and public interests written into law that have left a burdensome and painful legacy in Pennsylvania. One cannot view these audits as mere reflections of differing views on the philosophy of government or even defend Governor Thornburgh's actions on the grounds that they fall within the purview of executive discretion. They rather indicate an organized and planned effort, largely successful in these two cases, to not just starve two important government functions to limit their effectiveness, but rather these examples clearly indicate, to the contrary, that overt actions were taken to ensure that the law could not be enforced either in its letter or in its spirit.

The last issue I wish to raise is more unique. Much of the information I am sharing with you has not yet been made public.

Approximately two years ago, based upon information received, we began an investigation of an equipment purchase contract (the largest truck purchase in the history of Pennsylvania -- Contract #771770-01) by the Pennsylvania Department of Transportation (PennDOT) that eventually revealed extensive evidence of serious criminal misconduct. In brief, in a rigged bidding procedure that was designed to give this contract to a specific vendor, a resultant financial plan was concocted that later led to violations of the contract and extensive violations of the criminal law. The vehicles were a poor and inadequate product -- in fact, the engines are being replaced today, even before the trucks have been completely paid for -- at additional cost to the taxpayers -- it was, by the way, known by the Secretary of Transportation and many others that the engines were a "throw-away" prior to the contract letting.

During the early stages of the contract performance, the Commonwealth illegally prepaid Hubco Ford (the contractor) over $4.7 million for trucks not yet in existence, based upon forged documents. The bidding irregularities were reported to the FBI and the U.S. Attorney. At the present time, my office is in court, doing our best to depose the local U.S. Attorney and the local FBI Special Agent In-Charge in order to complete our investigation, since we have clear indications that they were either lied to by state officials at that time, or, God forbid, were induced not to pursue these matters vigorously. In any event, they may have information that we need about this contract.

Eventually, we also turned our investigative product over to the U.S. Attorney/FBI and to the Commonwealth's Attorney General seeking their cooperation in January, 1987. As of this time, nothing has been done by either of these offices. Lest anyone question the quality or quantity of evidence supporting these allegations, I shall be pleased to share the information with the Committee.

Sometime after we had turned this information over to the appropriate criminal investigative agencies, and after realizing that they were stalling, we decided around August, 1987, that we were on our own.

We have since learned that the Secretary of Transportation had been informed of the illegal prepayments, had been aware of them, but had not only not stopped them, but had, in fact, allowed them to continue. We have also learned that other high officials in PennDOT had not only known about these matters, but helped cover them up. Furthermore, we have learned that at least one individual partially responsible, we are certain, for the forgeries and deceptions, not only was not disciplined nor removed when the wrongdoing was discovered (quite some time before we got into the case) but, in fact, had been transferred and was given bonuses.

It is difficult, if not impossible, to believe that at some stage, particularly when this became an internal problem known in Mr. Thornburgh's administration, that he was not made aware of it.

The reasons supporting this claim are in the summary that follows. Some of the information that follows is redundant, but this extremely limited and concise summary is numbered for your convenience.

1) Governor Thornburgh, and others in the administration, were asked to help Hubco Ford get government business. There was a great deal of activity in this regard.

2) This particular contract was designed, and the bidding process manipulated, to ensure that Hubco Ford would get the contract. Its main component was an engine (Caterpillar 3208, naturally- aspirated) that was known and acknowledged by those controlling the specifications to have been inadequate and incapable of proper performance or endurance in the Type IV truck -- a throw-away engine. It's being replaced today, even before the trucks have been paid for completely.

3) The finance package eventually used was in direct violation of the contract and had been the reason that the first bids by Hubco failed due to objections from competitors. The scheme had also been objected to by the late former State Treasurer, R. Budd Dwyer. In short, this particular financing plan was improper, unacceptable and illegal.

4) The contract was fraudulently performed. Specifically, among other violations of federal and state criminal statutes, fraudulent documents were used to secure taxpayers' money and Commonwealth payments were also manipulated in a manner which appears to have violated Federal law. When a truck was finally delivered, it never should have been accepted. Additionally, Pennsylvania's tax laws appear to have been violated.

5) The improprieties and illegalities of the financing scheme and the falsified prepayment activities were made known to a number of high officials in PennDOT. The illegality was not merely tolerated, but was continued.

6) The illegal activities of one main perpetrator of the paperwork deceptions, James Koozer (PennDOT's Chief Equipment Supervisor), not only went unpunished, but he, in fact, was rewarded for his wrongdoing. Though he was transferred, he was given cash bonuses, but retired just before our preliminary release of this information. Another participant, at least in the cover up, former PennDOT Inspector General, Bruce Doman, may have misled federal officials with self-protection in mind, since he was involved with original discussions on degrading engine specifications prior to this contract.

7) Serious questions about Governor Thornburgh's possible involvement or possible awareness of these problems seem quite justified. The Thornburgh Administration was very tightly controlled from the top. It was structured to run through the offices of the General Counsel and control was exercised through the various assistant counsels in the different departments and bureaus. No one in this administration could have directed the activities of the Secretary of Transportation, the Chief Equipment Supervisor, the PennDOT Inspector General, the PennDOT Comptroller and the PennDOT Chief Counsel without some marching orders from the top, i.e., either by the Governor or the General Counsel.

8) The Auditor General of Pennsylvania feels that he was personally misled by Mr. Henry Barr (the Governor's General Counsel at that time) about disciplinary action that was to have been taken against Bruce Doman, PennDOT Inspector General. What makes these matters so much more difficult to understand was the sham U.S. Attorney/FBI's investigation and the refusal of Pennsylvania Attorney General, Leroy Zimmerman, to take action on clear and incontrovertible evidence of illegal activities that was presented to them.

9) It is impossible at this time, knowing what we do about the events preceding the contract, about the execution of the contract, and about the attempt to cover up and the failure to investigate the contract, to not raise extremely serious questions as to why, and through what mechanisms, the efforts to suppress the investigation and prosecution of these matters were put into operation.

10) The person who appears to have coordinated the effort of performing the contract overall was Tom Larson, Secretary of Transportation. Though it was probably done originally for political reasons, I doubt if it was done with the expectation that Mr. Koozer and Mr. Kernan and Mr. Hubler (principals in the Hubco activity) were going to behave illegally, as they did.

11) Conjecturally, once discovered, the fear of embarrassment became so great that those involved had to defend themselves and the original decision to direct the contract to Hubco. I do know that when Henry Barr visited my office to discuss this matter and mentioned disciplinary action to be taken against Bruce Doman, that he did so at the personal request of the Governor and was to report directly back to the Governor. Over a year after this meeting, I discovered that Bruce Doman, PennDOT Inspector General, in fact, was not dismissed, but rather was hidden away as a law clerk in the Department of Labor and Industry. We only located Doman, after many efforts to find him failed, by running his name on the state employees' list -- he popped up in Southeastern Pennsylvania.

12) What is really repugnant in all this is the fact that two criminal investigative entities persist in avoiding their responsibilities. Though we were only partway through this investigation, we really thought their efforts would allow us to piggyback and finish our investigation after we had briefed them. We were wrong. Any fair reading of the quality or quantity of the evidence involved here defies any attempt at even remotely

insinuating a lack of pervasive criminal misbehavior on the part of a number of people that were inappropriately and explicitly tolerated and then covered up upon discovery. To not fully investigate these matters is simply wrong and dishonest.

Therefore, I request that the record be kept open so that I may submit an interim report and then make a final report to the Committee when my investigation is completed. I would further suggest that some provision or request be respectively made for and of Mr. Thornburgh that he disassociate himself completely from any federal investigation associated with the PennDOT case that, quite frankly, should begin immediately. These facts cry out for a RICO investigation above all. Meanwhile, the statute of limitations, state and federal, continues to run and run and run.

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Senator SIMON. Thank you, Mr. Chairman.

Senator KENNEDY [presiding]. Governor, Senator Metzenbaum is here and I thought perhaps you might give some response to that memoranda that——

Mr. THORNBURGH. I would appreciate the privilege to do so, Senator. The material that you gave me, Senator, I examined to the extent that I felt that I was authorized to. Certain portions of it I am advised are marked as "classified," and I am not cleared to review that.

I think the matter of most concern to you and which apparently was reported in The Wall Street Journal, was the memorandum from Mark Wolfe to Peter Bensinger, and I guess I just am going to say it just shows and confirms my experience as a lawyer for some 30 years how mischievous it can be to examine some but not part of the record.

I called Mr. Wolfe at lunch time. He is now a U.S. District Court Judge in the District of Massachusetts, and the long and short of it is that your concerns about that memo, within its four corners, about an unwillingness to produce certain information to the U.S. Senate is, I believe groundless.

Mr. Wolfe advises me, as the memo indicates, that the determination by the Attorney General of the United States reflected in that memo, not at that time to furnish information out of the so-called Defeo report was prompted by the pending nature of both criminal investigations and administrative proceedings within the Drug Enforcement Administration.

Judge Wolfe advised me further that when those matters had been fully completed, an agreement was reached with the Senate Permanent Subcommittee on Investigations whereby all of the requested material that Senator Jackson, and later Senator Nunn and Senator Percy, had requested to be forthcoming, was forthcoming, and that, as I might have expected, although I had no reason to know at the time that I was confronted with this information, and, as often happens, I suspect even to this day, that there are terms and conditions that are the subject of negotiations between validly constituted Senate committees and the Department of Justice that cover concerns about pending matters and matters of sensitivity or national security implications that are being worked out constantly, and I am informed by Judge Wolfe that that was the instance here.

Furthermore, Judge Wolfe confirmed what I said this morning from very dim recollection, that the entire matter was in the personal charge of Attorney General Edward Levi and Deputy Attorney General Harold Tyler, rather than in the Assistant Attorney in charge of the Criminal Division, because of the fact that this report and the action taken in follow-up was commenced before I assumed office in 1975.

Judge Wolfe was watching, he informs me, on television this morning and saw this, and he said, "Dick Thornburgh wasn't involved in that." And when I spoke to him, I said, "Mark, you have got a good memory and it comports with my memory," and he said that the Attorney General, as I had indicated from recollection this morning, Mr. Levi, was the initiator, an actor and responder to the Senate on these matters. So I mention that only to show you the level of my concern when this matter was raised this morning and my determination to get a more definitive answer than that which I gave to you on the basis of a rather shaky recollection, in the hope that in due course, out of perhaps this hearing room, we can follow up to your satisfaction.

Now, Judge Wolfe is on vacation, he was kind enough to chase me down, but I wanted to address that rather than leave hanging some of the tentative conclusions that I had conveyed to you this morning.

Senator METZENBAUM. Governor Thornburgh, I appreciate your chasing down Judge Wolfe or his finding you, whatever the case, but I guess I would have to say to you that I know nothing at all about this subject. I was not an earlier player in connection with the matter. Senator DeConcini was, and we know his quote in the paper today, we know what he said here today, and this report I did not seek. It came to me from unsolicited sources, and we looked at it, because we thought that it had some relevance.

Why I am having difficulty with your comments concerning your own involvement as well as Judge Wolfe's, is that you have to look at the memo which says, as we discussed at yesterday's meeting, the Attorney General, the Deputy Attorney General, Assistant Attorney General Thornburgh, and then some others, it was decided that we should continue to resist disclosing to Congress any portions of the Defeo report being reviewed for possible criminal or administrative action.

Then the question was that there were pending criminal matters, and the report goes on to say that Mr. Thornburgh indicated that the Criminal Division has, except for a closing memorandum on certain aspects of the Permuto matter, now completed the review and does not contemplate further action.

It goes on to say, if, as we assume, some matters can be closed rather quickly, we intend to inform the Senators that we will afford them conditional access to portions of the Defeo report as DEA deems the matters they involve closed. It is expected that the conditions of such access will be negotiated while DEA is conducting its review.

The comment that you are making would seem to suggest that the only one who made the decision, who called the final act, was Attorney General Levi, and you do not get that impression here. It does mention, I might say, as we discussed, the Attorney General must know how long DEA expects it will take to evaluate each reasonably segregable portion of the Defeo report before he can respond substantively to Senators Percy and Nunn, who have requested it.

So, I recognize what you indicated had been stated by Judge Wolfe, but I would go on to point out that then there is another item that was sent directly to you from Mary Wagner apropos this subject on September 10, 1975, and that is actually prior to this date.

So, I am saying to you that I respect your rather difficult assignment of trying to remember what happened 10, 12, or 13 years ago, 12 years ago, but I would guess from this that there actually was a higher degree of involvement on your part than maybe you recollect at the moment, and I do not know whether Judge Wolfe recollects specifics any better, but I think I would have to say that I am not sure all the answers are in, I am not sure we know all the answers, but I certainly know that we cannot expect you to have a perfect memory of what happened 12 years ago.

It is disturbing about this whole question of withholding information from the Congress. You indicate that Judge Wolfe says that all of that information was subsequently made available to the Congress. Senator DeConcini does not have that feeling that he got all the information he was looking for, but I do not know that we can carry this matter any further.

Mr. THORNBURGH. Well, I do not know what information was requested by Senator DeConcini from officials in the Department in the subsequent administration to the one in which I served.

I guess the only point that I was trying to make, Senator, was that, by reading that document and that document alone, an erroneous impression is created, when it is my understanding from Judge Wolfe that later in the process an agreement was struck with Senator Nunn and Senator Percy to make available those portions of the file in which they were interested and to their satisfaction.

Reading that document alone, saying that at this time these items will not be furnished is only half the story, when as I am advised by Judge Wolfe, who was General Levi's Special Assistant on these matters, that in due course they were furnished. That is the only point that I am trying to make.

Senator METZENBAUM. I think the critical question is what will be your policy regarding furnishing materials to the Congress subject obviously to their appropriate safeguards when a criminal investigation has been closed?

Mr. THORNBURGH. I think my policy would be exactly the same as Attorney General Levi's, and that is to say that, while a pending criminal or administrative proceeding is on-going, it is not appropriate to make those materials available. When you are into areas involving national security information, classified information, then there are obviously some different ground rules that have to be worked out.

I can tell you this, I have no blanket policy or overbearing desire to withhold information from the Congress in those circumstances which do not fall within those categories. Now, it is an obvious negotiating situation, and I need not tell you, because I know and expect every Member of this panel has from time to time had to negotiate with regard to information sought from the Department and other executive branch agencies.

Senator METZENBAUM. I guess I am only asking you, will you make available to the Congress, subject to appropriate safeguards, such information that the Congress requests when a criminal investigation has been closed?

Mr. THORNBURGH. Again, subject to the provision of classified information. In this particular case, you are talking about materials that have been classified.

Senator METZENBAUM. I am just saying generally.

Mr. THORNBURGH. In a normal criminal investigation, I think the general rule would be yes, but each one of these has to be looked at, I suggest, on a case by case basis, and I would propose to do that, as I understand all of my predecessors have.

Senator METZENBAUM. Thank you.

Mr. THORNBURGH. Certainly, there would be no blanket policy of not providing the information, Senator. I want to make that absolutely clear. But I cannot envision the permutations and combinations that might come up which would occasion me from saying I cannot furnish something and then have you misunderstand something that I had said today. So I guess to a certain extent I just want to circumscribe it with some provisions that would not make me appear to be less than forthcoming with you today.

Senator METZENBAUM. Thank you.

Senator KENNEDY. The Senator from Pennsylvania.

Senator SPECTER. Thank you, Mr. Chairman.

Senator Metzenbaum, while you are still here, I would like to make a comment about the memorandum that you have referred to, March 26, 1976. I was not at the meeting, as you were not at the meeting, but I think it worth nothing, at least from the perspective of this Senator, that my reading of the memorandum does not correspond with your in terms of imputing any more participation or knowledge by Governor Thornburgh than he has recollected.

I think it is important to note for the record and for the people who are watching this proceeding that it is a memorandum from Mark L. Wolfe, Special Assistant to the Attorney General, to Peter Bensinger, Administrator of the Drug Enforcement Administration, and copies were shown to the Attorney General, the Deputy Attorney General, Richard L. Thornburgh, and Togo D. West, Jr., and you did point the substantive matters out, but I think they are worth just a moment's focus.

The memo says, "As we discussed at yesterday's meeting of the Attorney General, the Deputy Attorney General, Assistant Attorney General Thornburgh, Togo West and myself, it was decided that we should continue to resist disclosing to Congress any portion of the Defeo report being reviewed for possible criminal or administrative action." So, on the face of the memo it is apparent that there were two officials there of higher rank than the Assistant Attorney General, to wit, the Deputy and the Attorney General himself.

You did point this out, but I think it is worth a moment of focus, the third full paragraph: "As we discussed, the Attorney General must know how long DEA expects it will take to evaluate each reasonably segregable portion of the Defeo report before he can respond substantively to Senators Percy and Nunn, who requested it." This is a rather forceful statement, that at least the writer of this memo was looking to the Attorney General, Mr. Levi, to make that decision, which would be expected in the context of his participation in the meeting.

So, I think that is important to focus on, in terms of what area of responsibility the Assistant Attorney General was. With respect to the disclosures to the Senate, and I agree with you, that we have a lot of problem getting documents we should have, and that is a constant tug of war which probably will not be decided today or tomorrow, but the memorandum does show an executive interest in making disclosures, because on the line which I read and which you had read, that there was an intent to make a substantive response to Senator Percy and Senator Nunn, and then a later sentence, "If, as we assume, some matters can be closed rather quickly, we intend to inform the Senators that we will afford them conditional access to portions of the Defeo report as DEA deems the matters they involve closed."

So, unlike some of the problems we have had, where we reach an iron wall, there was some effort made to make a disclosure to the Senate. I just wanted to amplify the record to that extent.

Governor Thornburgh, I have a few questions, not many more, that I would like to discuss with you very briefly, some international law enforcement matters. First, the drug issue as it relates to international law enforcement, and to note that Attorney General Meese has spoken about the desirability of an international police force on drug enforcement, because of the difficulty of some of our Latin American neighbors on dealing with the problems of law enforcement, and we are involved now in a Senate bill on drugs, and my own sense is that Attorney General Meese is correct on that item, that we ought to have an international police force. Obviously, it would be hard to construct. The United States would probably be the principal policeman, not an unusual role for the United States, but I would like your general reaction to that concept.

Mr. THORNBURGH. I am frank to say that I have never considered that, but I can assure you, now that you have raised it, I will give it my attention and respond to you, Senator. I have not thought of that proposal.

Senator SPECTER. Well, if you could, I think we would be interested in your views as we craft that legislation.

I would like to talk for a few moments now about terrorism and about some of the difficulties which we have recurrently with getting letters responded to that we send to the Attorney General. I sent Attorney General Meese a letter on July 14, 1988, and have not yet received a response. That covers the point of responsiveness, but the substance of the letter I consider to be important and I want to ask you about it and ask for your follow-up.

There is a case involving a man named Muhammad Abud Atta, who was believed to have taken part in a terrorist attack on a bus in the Israeli-administered West Bank in 1986, resulting in the driver's death and the injury of a passenger, and there was a probable cause hearing, where a U.S. magistrate denied the request for extradition, raising a question as to the way that Atta was taken into custody.

The law is, with Supreme Court decisions—and you can confirm this obviously to your own satisfaction—that the way a person is taken into custody is not grounds for release on a criminal charge, but there apparently is an effort made by some to say that the political offense exception attaches here and he has not been extradited, and it seems to me a very serious matter and one where the United States ought to cooperate in extradition on such matters, just as we try to get extradition to the United States, and I would ask that you take a look at that matter and give this Senator as early a response as you can.

Mr. THORNBURGH. I will do that, Senator.

Senator SPECTER. I would like to discuss with you—how much time do I have left, Mr. Chairman?

Senator KENNEDY. Another 5 minutes.

Senator SPECTER. Thank you. I will not take all of that time.

Senator KENNEDY. Take your choice. [Laughter.]

Senator SPECTER. We say on the Senate floor sometimes, we yield as much time as the Senator may allow or like, and I will take about 2 minutes.

I would like your consideration of an idea which is percolating, which I have discussed on the record with Secretary of State Shultz, about having an international court to try terrorists, and it is an idea which arises because of the difficulty of getting extradition on a man like Abud Abbas, where he was forced down on an Egyptian airliner, a very celebrated case arising out of the Achile Laurel incident, he goes to Italy, they release him under political pressure, indict him after the fact, he has a 30-year sentence in absentia which is meaningless. He goes to Yugoslavia, they also release him. The thought is to try to construct an international court, not dealing with terrorism, because terrorism is to hard to define, but identifying specific offenses like taking hostages, hijacking airplanes, and that it might also be useful to have jurisdiction for international matters like the drug czar. For instance, the drug czar Matta, who was turned over by Honduran officials to the United States and it almost caused—it did cause an international incident, with an attack by Hondurans on the U.S. Embassy.

So, in these context, where there is a strong nationalistic feeling, that you cannot get the countries to turn over these terrorists to the United States, that we might construct a concurrent jurisdiction or an optional jurisdiction of an international court. It is a complex matter, but I did want to raise it today, to give some currency to the idea.

I have met with Judge Soffear and Representative Mark Richard from the Criminal Division of your Department, and I would very much appreciate your reviewing it and perhaps your comments in the not too far distant future.

I yield back the balance of my time.

Senator KENNEDY. The Senator from Alabama.

Senator HEFLIN. Governor, I asked you about General Noriega some back in 1976, we discussed it in the earlier era. Do you have any sense of that or do you have any recollection that may have been refreshed about General Noriega since we talked this morning?

Mr. THORNBURGH. No, only to the extent that, having seen the materials that formed the basis for Senator Metzenbaum's questioning of me for the first time at the lunch hour. I conferred with the author of that memorandum, Judge Mark Wolfe, who confirmed why I have such a hazy recollection, and that is that that was not a matter that I was involved in, except peripherally, that the Attorney General and the Deputy Attorney General had basically taken charge of that, and the decisions with regard to whether or not criminal prosecutions were appropriate, on the basis of the material contained in the report, was not something that I was directly involved in, so I have no further recollection than what I expressed this morning, this matter having come up essentially before I came to the Criminal Division.

But I will assure you of this, Senator, based on my experience and insight into the drug problem and my willingness to go where the evidence leads, if there were evidence brought to my attention now or then of involvement of the ilk of General Noriega in drug trafficking, I would not hesitate to prosecute, as the Department has not hesitated to prosecute in the case that is now awaiting trial or at least apprehension of General Noriega in Florida. I want there to be no mistake whatsoever on that. There is no timidity, there is no unwillingness, there is no lack of resolve on Dick Thornburgh's part to bring major drug pushers to the bar of justice, wherever and whomever they may be, whether they be American citizens, foreign nationals or what have you. I think it is important for me to say that to you, in view of the questions that have been raised about this particular investigation.

Senator **Heflin**. I do not intend this to be to any degree political, because you served under a President in 1976 and it was an Attorney General and then it was a Democratic administration that followed that, and then it was followed, of course, by the present administration, so there have been both Democratic and Republican administrations involved.

But assuming, one, that there was an alleged plot, there was a plot by U.S. agents to assassinate Noriega 12 years ago, there had to be sufficient evidence that he was a terrible, bad character as of that time, and that he was involved. Whether or not the assassination plot should have been considered or not considered, it would indicate that there would have been sufficient evidence that he be indicted. And the failure to have indicted him as of that time and the failure to indict him 2 years later, 3 years later, 4 years later, or whatever it may have been, may be the result of the situation that we have in Panama today.

It would appear to me that if certain drug leaders who are involved in governmental positions are indicted, that their own governments would be reluctant to promote or to put them into additional positions of power.

I would hope that you would investigate, go back and trace the history of General Noriega as to his involvement in the drug trafficking and evaluate whether or not there should have been indictments, and if there had been indictments, would we have a different situation in Panama today.

I think we also have to look at other leaders or other governmental officials in countries that are involved in the drug trafficking problem, and if an indictment, regardless of whether you can extradite or can get it, may have some remedial effect in eliminating some of the problems that we have.

So, it appears to me that this is something that could be done and a contribution that could be given towards reducing the drug problem as we have it, and I urge you to make this a priority to investigate Noriega and Noriega's involvement in drug trafficking over a period of time, and the failure of the U.S. Department of Justice to take action as they have now taken action.

I just stop to think, if he was indicted 12 years ago, he may not be where he is today and we might not have that problem. So, I think it is an important thing for you to look into and I urge you to do that.

One other matter that I think we are faced with and I think you have to give a lot of attention to is that, with some changes in the law, sentencing guidelines, and the issue of drugs and mandatory sentences, we are going to have to look at prisons and the building of new prisons, because in my judgment we have got to incarcerate certainly the people that have the facilities to do it, and the issue of States involved in this may well be a serious growing problem as we come to the future, so I would ask you to look into that during this period.

Thank you.

Mr. THORNBURGH. I would be glad to, Senator, because I could not agree with you more. When we passed tough minimum mandatory sentences in Pennsylvania, when I was Governor, I insisted that that bill be accompanied by a similar authorization to increase our prison capacity by 30 percent, on just the basis that has been mentioned by Senator Specter and yourself today. That is to say the deterrent capability of mandatory sentences and the deterrent capability of other stiff sentences that may have been handed down by judges is eroded when there is no capacity to absorb those convicted defendants into the prison system. It either means that you are going to start letting people out when you should not let them out, or that you are going to find a variety of stratagems resorted to by the criminal justice system to keep from putting more people in at the front-end, and I intend to discuss with the Director of the Bureau of Prisons at an early date a realistic agenda, not obviously for the next 6 months, but for a considerable period beyond that that can form a responsible basis for meeting your concerns in that regard, because I share them.

Senator HEFLIN. Thank you.

Senator KENNEDY. Governor, if I can bring you back to the last question I was asking you about of Brad Reynolds, with regards to Mr. Reynolds in particular, he was denied the advice and consent for Associate Attorney General. Can you assure us that he will not be given responsibilities beyond those of the Assistant Attorney General position for which he was confirmed?

Mr. THORNBURGH. He currently occupies the position as Counselor to the Attorney General, and I have made no decision with respect to the configuration of the Department or the personnel, that is going to occupy positions within the Department if I am confirmed.

I am obviously going to have to examine each of those positions and each of those personnel before making a decision in that regard, and I think it is inappropriate to single out any one person or one position at this stage of my knowledge and examination and scrutiny of the Department for any special treatment. I would respectfully defer response to that question until I have a chance to get up to speed with what the Department's current state is and what the individuals in certain positions are doing, and what other needs there may be to be met.

Senator KENNEDY. Well, we are talking about someone who was rejected specifically by this committee to carry out the functions of Associate Attorney General. So if he is, through some reorganization, given overall supervision of the following organizations: Criminal Division, Drug Enforcement, Immigration and Naturalization, and so on, now he was rejected by the Senate for that position. You are not suggesting that some kind of reorganization down there that could include these functions for which he was rejected with the advice and consent, that you would tolerate that, would you?

Mr. THORNBURGH. All I am saying, Mr. Chairman——

Senator KENNEDY. Well, that is only my question, that is the only question.

Mr. THORNBURGH. Well, my response is that you are telling me a lot of things that I do not know, and I think I ought to have the opportunity to examine the current operations, personnel, and configuration of the Department before committing either in a specific or in a general to any plan——

Senator KENNEDY. I think I do.

Mr. THORNBURGH. I think you understand what I am saying and I understand what you are saying.

Senator KENNEDY. Well, I want to make sure I do. I can understand that you do not want to commit now in terms of particular personnel in the Department for particular responsibilities. I understand that and respect that. But we are dealing against a background where an individual was recommended for a particular position that has specific functions which are outlined in the statute, and he was rejected.

There are those of us that believe that he has been filling many of these functions, and we reference the memoranda which you may have perused. I am not going to get into the details of it, but you will see that he was making judgments or giving advice on a variety of different functions, all of which would be the functions of the Associate Attorney General.

My only point is we would like assurances that whoever you put in, in whatever position, that they are going to only have the responsibilities for which they have been confirmed for and not others.

Mr. THORNBURGH. I believe I stated that to you earlier. I can affirm that. I am merely asking let me have a chance to look and see what the situation is before getting locked into any specific position on an individual or position. The jobs in the Department of Justice are fairly carefully defined, through statute and regulation, and I will observe those to the maximum extent possible.

Senator KENNEDY. Okay. Thank you.

I mentioned, when we were talking earlier in the office, the asylum regulations. After the Supreme Court's ruling in *INS* v. *Cardoza* in 1987, Deputy Attorney General Burns had the Justice Department develop asylum regulations. After one false start in August 1987, there were balanced ones which were then proposed in the Federal Register on April 6, 1988. The April 6 draft regulations resulted from broad consultation with Congress, the public, and had wide support because they balanced enforcement with compassion.

However, last week, in a departure from the consensus had been worked out, the Department announced in the Federal Register, on July 27, that it was proceeding with only one part of the package.

The question is will you review that and can you give us at least some indication that you will examine the work that has been done by Mr. Burns and also what I would consider really the unbalanced recommendation that has just been made by the Department, in contrast to the very what I thought very excellent work that was done by Mr. Burns after consultation with a wide range of groups. Would you give us assurance that you will do your own review?

Mr. THORNBURGH. We did discuss that, and I did assure you that I would look at that. I have not had a chance to do so, but I will renew that commitment here, Mr. Chairman.

Senator KENNEDY. Okay. You, in response to the earlier part of our hearing, I thought you said, and I think very importantly so, that your prime area of interest is going to be about what the Department can do in terms of battling substance abuse and that clearly is the number one concern of the American people, and I think, given your own record of effectiveness in different areas of public service, this ought to be good news for the American people.

One of the things that we are working out in terms of attempting to develop a bipartisan package is what the balance ought to be in funding initiatives directed at supply and demand. I think the first call was that all the funds were going to be in interdiction, and obviously there is a role for that. But I think we have seen, with the GAO studies and the Rand studies, which indicate that now we are probably interdicting anywhere from 8 to 10 percent, that even if you double the interdiction, and there has been a dramatic reduction in price of about 400 percent over the period of the last 8 years, that even if you double the amount that is taken in, it will primarily affect price very modestly but not result in a great reduction of the demand.

We have had some hearings in this committee about the importance of strike force crackdowns in some communities. We had a very interesting experience in my own State of Massachusetts, in Lynn, where they had a very vigorous cracking down, and what they found out is that since there were not in other immediate communities available sources of supply, that it was driving people into treatment centers. It is a very interesting experience.

What I am basically asking you—I do not know whether you have had the chance to think about it—is what guidance you would give us in terms of the supply and demand aspect in terms of resources. We have some difference now between Republicans and Democrats in terms of amounts. One is about $1.4 billion, and the other is about $3 billion, but I think that those will be worked out when we begin to figure out who is going to pay for it.

But just in terms of that balance between effects on supply and demand, there really is not a lot of difference, although there is some in between both of those packages, not enormous. One is 60–40, the other is 50–50. Do you have any—can you give us any guidance as to where you think the——

Mr. THORNBURGH. I wish I could, Senator. I think that probably this is as vexing a question as you can get in this area, because quite clearly you are dealing with the two polar extremes. If you dried up all the supply, then you would not have any substance abuse problem because there would be no substance to abuse; if you dried up all the demand, you would not have any supply problem because there would be nobody for the suppliers to supply.

Senator KENNEDY. I like the second part of the equation.

Mr. THORNBURGH. Both of those are desirable, but probably unreachable goals, and I think what you have to do is look at somewhere along the continuum, where a balance is struck and then observe what happens.

I earlier indicated that Senator Specter's demonstration project in Philadelphia can give us some sense of what might be done on the supply side. I remember back when I was dealing with this problem, the difficulty of evaluating drug treatment and rehabilitation centers, the word was always that 50 percent of the money spent on rehabilitation and treatment is wasted, but we never know which 50 percent it is.

One of the things I think ought to be included in any kind of comprehensive anti-drug effort, particularly with the amount of dollars that are being talked about, is a strong evaluation component, so that over a period of time you and we can look at those things that have worked and perhaps increase the effort in that score and leave by the wayside those that have not proved to be as successful. Because with this amount of appropriation being talked about, there are going to be a lot of people out there who are going to try to hustle programs, and you and I have been through that, I am sure, many times before. But I think a very strong evaluation component is a sine qua non for an effective effort, however that balance may be struck.

Senator KENNEDY. I agree with you. Even with the $3 billion program, we are talking about dealing with 10 percent of those that have substance abuse problems. We are dealing now with approximately 8 to 10 percent. Even with the expenditure of $3 billion, broken up about 50–50, we are only talking about an additional 10 percent. We have people waiting in New York State that would have to wait 2 years if they wanted to try and deal with the problem, to be free from it. In my own State, it is down to considerably less, but you still have in many communities a very considerable amount of time that is being delayed. So this is going to be something that we are going to be in for the long haul, I believe.

My own feeling is that if you eliminate the supply, had some spray or something and could eliminate it all over the world, in 90 days there would be other crops or it would be made artificially and it is going to come right back at you. But if you really deal with the demand side, I think you are really ahead of the curve. But just how we can do it and what the proper mix is, we are going to all have to work on for a very considerable period of time, and your role in it obviously will be key.

Let me just get into one last area, an area that I have followed over a period of time, that is law-related education, in particular street law programs, which a number of high schools have been involved in now. There are about 25 law schools now that are involved in these street law programs, and they help children internalize values and learn about the legal system. Law-related education programs have had some impact in reducing drug use and delinquency and other criminal activities.

We had a very good one out here at Georgetown that has been effective, and we have seen a number of them over a period of time. I do not know whether you are familiar with them. If not, I would love to be able to send you some material on them. I know you are going to have a lot of things to catch up on, but I think it is something which offers again some hope and some opportunities to reach into a lot of communities that we all have difficulty in reaching into in terms of——

Mr. THORNBURGH. Yes, indeed, Senator. When I was the U.S. attorney in my home town of Pittsburgh, I and my assistants would go to innercity high schools and teach in classes, with the teacher, about the criminal law, and the most intriguing thing was to see young people who had gotten most of their perceptions about police, prosecution, courts and corrections off of the street corner, take a real interest in what the difference was between pardon and parole and probation and what the elements of proving a case were, and I had some reluctant assistants who did not really cotton to this activity at the outset, who came intrigued with the interchange with young people who, no matter where they are or what kind of a community or school they are in, have an abiding interest in how the world works. and I would be most interested in looking at how that is done and perhaps replicating it.

Senator KENNEDY. Senator Simon?

Senator SIMON. Thank you, Mr. Chairman.

Just a few. One comment you have been discussing now. Let me say something that you are not in a position to say, if anybody is watching over at the Justice Department, and that is the key political appointees ought to all voluntarily submit their resignations to you and then you can make a decision of which ones to keep and which ones not to. I think that would be a service to the Justice Department and a service to you. I do not ask for any comment on your part.

Second, there is an article here by a Rich Kirkpatrick—I do not have the name of the paper—Associated Press, and let me just read a couple of paragraphs here:

"It has been the nature of the Thornburgh administration to speak with a measured, controlled voice, through specific channels. And when it appears that information has made its way outside the channels, no time is wasted stopping the leak."

"For years, the Bureau of Elections—in the Department of State—has provided reporters with prompt, accurate information on campaign reports filed in the Bureau."

"But within the past 6 months, the staff has been ordered to stop talking to reporters."

"What especially vexes reporters, given the administration's insistence on information via press secretaries, is the refusal of the governor's press office to reply promptly."

Any comments?

Mr. THORNBURGH. It sounds familiar.

Senator SIMON. You read the editorial comment before?

Mr. THORNBURGH. Oh, it comes from most of the reporters I have had to deal with. They want to come in and have complete access to your files and, yes, we did make an effort to speak with one voice. I think that is positive and productive when it comes to management. I wish I could say that that was successful in stopping leaks, but it was no more successful in Harrisburg than apparently it is in Washington, so that is an on-going—but I do not apologize for that, Senator.

I think that you have press secretaries who are experts in dealing with the press and they are more often than not able to help reporters get an answer to their question, rather than frustrate them, and I think what is evidence in Mr. Kirkpatrick's frustration is that a great many of the people who served me were loyal to my administration and did not spend all their time leaking to reporters or giving different versions of things than what the Governor's views were, so for that I am grateful. I hope the same thing occurs in the Department of Justice.

Senator SIMON. In terms of prompt replies, I guess that is one of the things that frustrates not only reporters but Members of the Senate from time to time——

Mr. THORNBURGH. I gathered as much today.

Senator SIMON [continuing]. I would simply urge that, to the extent that it is possible, obviously it is being done.

Mr. THORNBURGH. Certainly.

Senator SIMON. Then, finally, you have gone through a variety of questions, and you are entitled to two softball questions here. One, do you intend to vigorously enforce the antitrust laws?

Mr. THORNBURGH. Certainly.

Senator SIMON. Two, we have just passed a Fair Housing Act. It came out of the subcommittee that I chair. Do you intend to move promptly on seeing that it is enforced?

Mr. THORNBURGH. I do, indeed. I regard it as a landmark piece of legislation, and I compliment all of you who were involved in fashioning it and securing its passage. I think it is very positive and constructive. Frankly, I am not intimately familiar with its provisions, but it seems to have gotten universally good views, had the support of the administration and it will be on our agenda for vigorous enforcement.

Senator SIMON. Thank you very much. I have no further questions.

I do ask unanimous consent that this article by Rich Kirkpatrick, to which I referred, be made a part of the record, without objection.

[The article referred to follows:]

Rich Kirkpatrick

Thornburgh keeps tight rein on team

HARRISBURG — Gov. Dick Thornburgh's administration values team play and moves quickly when one of its members bucks marching orders.

Secretary of Aging Gorham Black found that out recently week when he declared that it was a bad idea to divert lottery funds to loans helping jobless people make their mortgage payments.

Thornburgh himself had announced the plan as one of the key initiatives of his new budget. So it was surprising, and risky, for Black to voice his opinion.

Within a day, though, Black was brought in for a chat with administration officials. He later issued a statement saying, in effect, he had changed his mind.

Asked if Black had been called on the carpet, William Green, deputy press secretary, would only say, "We talked to Gorham."

It has been the nature of the Thornburgh administration to speak with a measured, controlled voice, through specific channels. And when it appears that information has made its way outside the channels, no time is wasted stopping the leak.

With the start of the second term, such repairs are already under way in the Department of Environmental Resources. Gone is a press secretary who made a habit of giving reporters access to officials at all levels. In his place is a press aide who worked in the Department of State, which recently underwent its own fine-tuning.

For years, the Bureau of Elections — in the Department of State — has provided reporters with prompt, accurate information on campaign reports filed in the bureau.

But within the past six months, the staff has been ordered to stop talking to reporters. Workers in the bureau now refer all calls to the press secretary.

So tight are the clamps that a reporter who was in the bureau recently could not get an answer to a simple, technical question about whether the governor's inaugural committee was going to file an expense report. The staff's response: Go to the press secretary.

What especially vexes reporters, given the administration's insistence on information via press secretaries, is the refusal of the governor's press office to reply promptly.

Calls often are not returned, or a press aide responds hours after reporters' deadlines have passed.

This may sound like personal pique. But public information is at stake. And that should be everybody's concern.

Rich Kirkpatrick writes for the Associated Press.

Senator SIMON [presiding]. I see that I have just been handed the gavel. Do you have any further questions, Senator Specter?

Senator SPECTER. I have no further questions, Mr. Chairman.

Mr. THORNBURGH. No softballs, Senator?

Senator SPECTER. No. They would not be appropriate. We have softballs from time to time, and nominees like you end up resenting them a lot.

Mr. THORNBURGH. We want real questions.

Senator SPECTER. I would just say that your presentation has been excellent, Governor Thornburgh, as I had expected it, and I look forward to early confirmation.

Mr. THORNBURGH. Thank you.

Senator SIMON. We were just about to adjourn the hearing when I noticed Senator Humphrey came in. Senator, do you have some questions, and I gather you do?

Senator SPECTER. Governor Thornburgh, I am not going to withdraw my comment, notwithstanding the fact that the hearing is not yet over.

Senator SIMON. Senator Humphrey, while he leaves, I will adjourn quickly here now. [Laughter.]

Senator Humphrey.

Senator HUMPHREY. Excuse me interruption, Governor. I am having my teeth straightened. I had a dental appliance which I did not want to remove in front of everyone, so that is why I had to step out.

As I said in my opening remarks, there is no question about your professional qualifications. There are one or two matters that I would like to discuss, if you do not mind. I hope that I am not redundant, but in any event, here goes. In 1979, you apparently proclaimed something called Gay Pride Week in the State of Pennsylvania, is that correct?

Mr. THORNBURGH. That is right.

Senator HUMPHREY. According to an old press account. And was that declared in just 1 year, that was just one occasion?

Mr. THORNBURGH. It was. It had been a proclamation that was entered regularly by my predecessor in office and was presented to me in the normal course of business, signed by me, without much consideration. On further consideration, I amplified that I did not think it was an appropriate resolution and it was not thereafter issued.

Senator HUMPHREY. Was that something that came up from the legislature, or was that strictly an executive issuance?

Mr. THORNBURGH. It was developed out of the executive secretariat, which was the apparatus in place to prepare proclamations, five or six on a daily basis. It was a mistake, to put it purely and simply.

Senator HUMPHREY. Well, my concern on that thing is just that there seems to be a campaign of increasing intensity on the part of some sectors to portray homosexual relations as normal or natural and acceptable and, of course, anyone has the right to express such an opinion or even to write such an opinion, but I strongly feel that for public officials to do so is to disserve and misserve the public, and particularly our young people who get so many conflicting judgments about values flung at them these days. But you ultimately came to regard that as a mistake?

Mr. THORNBURGH. I think the resolution in the form or the proclamation in the form that it was drafted for and which I signed was mistaken by emphasizing the word "pride." I, Senator, must tell you that I respect fully the civil rights and civil liberties of sexual minorities and I do not want to be misunderstood on that score. But I think the highlighting that was implicit in the particular wording and designation of the proclamation I signed was unfortunate and was a mistake.

Senator HUMPHREY. Turning to another controversial issue, that of abortion, apparently you had a change of heart, is that correct, about the advisability of public funding of abortion, except in the case where the mother's life is threatened by continued pregnancy, is that right? You at one time did support public funding for——

Mr. THORNBURGH. It was my view during the 1970's, when my expectation was that the ambit of permissible abortions would be restricted to those cases where the life of the mother was in jeopardy or where the conception had occurred through rape or incest or where there was immediate and irreparable harm to the health of the mother established within the doctor-patient relationship, that those forms of legal abortion should not be available only to the wealthy, people who could pay for it.

As time went on, it became apparent that the ambit of permissible abortions was not going to be restricted in that regard, and that *Roe* v. *Wade* was going to continue to be the law of the land and, given the expanded orbit of permissible abortions, it was not my feeling that the taxpayers should subsidize that degree of activity and I did change my view.

Senator HUMPHREY. So, your approach at the Federal level would be the same?

Mr. THORNBURGH. Yes.

Senator HUMPHREY. As you know, in 1985, the Justice Department filed an amicus brief in the case of *Thornburgh* v. *Acog,* and the Justice Department's amicus brief challenged or supported the challenge to Roe's restrictions on State laws regulating abortions. The Department of Justice at that time was harshly criticized by some for challenging or even questioning the *Roe* decision.

When you assume office as Attorney General, would you be prepared to stand against congressional and other criticism in filing briefs challenging the application or the validity of *Roe* v. *Wade*? In other words, would public opinion or criticism sway your judgment?

Mr. THORNBURGH. I served 8 years in elected office as Governor of the Commonwealth of Pennsylvania and had to put up with a lot of criticism and adverse public opinion, Senator, and it never affected my ability to call them as I see them and particularly to follow the law as I saw it or to stake out positions that I felt were principled and supportable, and I would not expect that to change during my tenure as Attorney General if I am confirmed.

Senator HUMPHREY. Because you were Governor and active in support of State legislation that in the eyes of some restricted the right to abortion and pursued your point of view right up to the Supreme Court, defended your view right up to the Supreme Court, you have had quite a lot of immersion, substantial emersion in the *Roe* v. *Wade* controversy. You have thought about it a great deal, surely. What conclusions have you come to on the soundness and the validity of that decision?

Mr. THORNBURGH. Well, as you pointed out, the Department of Justice made the argument for overruling *Roe* v. *Wade* in the Thornburgh—that is me, this Thornburgh—and those arguments express my view and I think——

Senator HUMPHREY. You were in agreement with the Justice Department brief?

Mr. THORNBURGH. Yes, I was. Let me honest with you, Senator, there is no more complicated question to deal with and its many facets for anyone in public life today than the issue of abortion. It is not just a political question. It has religious, moral, medical, ethical, and numerable other overtones.

I have tried during my public life to grapple with this question as best I can in the context in which it has been presented to me. I am not sure that my views are absolutely correct. I am sure my views would probably find disfavor with a broad spectrum of members of this committee, Members of the Senate, and the populace at large, but I have and will continue to make a good-faith effort to develop a thoughtful response to issues in this area that are presented to me as Attorney General, and to state those views as effectively as I can.

Senator HUMPHREY. I am sure you will, Governor. In any event, you agreed with the brief at that time and presumably still do?

Mr. THORNBURGH. I think *Roe* v. *Wade* was wrong——

Senator HUMPHREY. Why is that?

Mr. THORNBURGH [continuing]. But it is now the law of the land, and unless and until the Court is presented with another opportunity that avails itself to overturn the case, it will remain such.

Senator HUMPHREY. Of course, and you have no choice but to enforce the law.

Mr. THORNBURGH. I do not.

Senator HUMPHREY. And we understand that. Still, from time to time opportunities arise before the Attorney General to seek the correction of what they regard as faulty precedents, faulty decisions based, of course, on careful professional analysis. What would you propose to do in this regard?

For one thing, I recognize that the term of the commission which you will fill is only a few months left, but assuming, as many assume, that you would be nominated once again were Vice President Bush to be elected President, in other words, if you had a substantial term ahead of you, how would you propose to deal with, how would you propose to use the resources of your office as Attorneys General do from time to time, in seeking the correction of what they regard to be erroneous decisions with respect to *Roe* v. *Wade?*

Mr. THORNBURGH. If the occasion presented itself, the proper case, the proper circumstances, I would not hesitate to proceed. But I want you to understand that this is a contextual decision.

Senator HUMPHREY. Would you clarify that term?

Mr. THORNBURGH. Yes, I will. It means that any decision, as a lawyer, that is made with regard to a course of conduct must depend on the facts and the evidence of a particular case. Generalities are not terribly useful when you are applying the law, because the law does not apply to theories, to concepts, to ideologies, it applies to the given facts of a particular case, so I want to make——

Senator HUMPHREY. Constitutional law applies to more general matters than——

Mr. THORNBURGH. Well, the Court does not decide constitutional law, except within the confines of a case that is before it. That has been one of the attributes of our system, the Court decides cases or controversies and does not enunciate principles.

Senator HUMPHREY. Right. I am determined I will not get into a debate on the points of the law, because not only do I not have your experience, but I am not even a lawyer.

Mr. THORNBURGH. That is probably a distinct advantage. [Laughter.]

Senator HUMPHREY. In any event, you would not be reluctant, in the case of *Roe* v. *Wade* or any precedent, to use the resources of the office to seek to correct what you, in your best professional judgment as Attorney General, felt ought to be corrected?

Mr. THORNBURGH. I would not, no.

Senator HUMPHREY. Thank you, Governor. Thank you, Mr. Chairman.

Senator SIMON. Thank you. And we thank you, Governor Thornburgh. Unless Senator Specter has changed his mind, our hearing stands adjourned and we thank you for your patience.

Mr. THORNBURGH. Thank you.

Senator SIMON. The committee is adjourned.

[Whereupon, at 3:45 p.m., the committee adjourned.]

DEPARTMENT OF JUSTICE NOMINATIONS

(Kmiec and Boyd)

THURSDAY, SEPTEMBER 8, 1988

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 3 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Edward M. Kennedy (acting chairman) presiding.

Also present: Senator Grassley.

OPENING STATEMENT OF SENATOR EDWARD M. KENNEDY

Senator KENNEDY. The committee will come to order, please.

The Judiciary Committee is holding hearings on nominations for two very important positions within the Department of Justice. The first nomination is of Douglas Kmiec, to be Assistant Attorney General, in charge of the Office of Legal Counsel. The Legal Counsel is one of the most important and challenging jobs in the Justice Department. He advises the Attorney General and other Department officials about what the law permits and what the law prohibits. It is a job that requires excellent legal skills and the independence and fortitude to say "no" when a proposed course of action would violate the law.

Mr. Kmiec is currently serving as Acting Assistant Attorney General. He is on leave from Notre Dame Law School, where he is Professor of Law and Director of the Center for Law and Government. He has a distinguished scholarly record and we look forward to hearing from him today.

The second nomination is of Mr. Thomas Boyd, to be Assistant Attorney General, in charge of the Office of Legislative Affairs. That position is charged with maintaining good relations between the Congress and the Justice Department, in the face of the tensions that inevitably arise in our constitutional system of checks and balances. It is often a difficult job and a very important one, because the Congress and the Department must have good working relationships if our country's laws are to be vigorously and fairly enforced.

Mr. Boyd is currently serving as Acting Assistant Attorney General. He previously served with distinction in the Justice Department and on the staff of the House Judiciary Committee.

Both of the nominees have highly distinguished Senators and Representatives here to introduce them, and we look forward to their remarks.

Mr. Kmiec, we are glad to have you here. I recognize the senior Senator from Indiana, Senator Lugar. Dick, we will be glad to hear from you. We are very privileged to welcome you to the Judiciary Committee. We want to thank you very much for taking the time to join us and to tell us what you might about this nominee.

STATEMENT OF HON. RICHARD G. LUGAR, A U.S. SENATOR FROM THE STATE OF INDIANA

Senator LUGAR. Thank you very much, Mr. Chairman. I am honored to have the opportunity to introduce to the committee——

Senator KENNEDY. We want to also thank Congressman Hiler, from South Bend, IN, who is with us today. We are glad to have you here as well.

Senator LUGAR [continuing]. To introduce to the committee Douglas W. Kmiec, nominee for the position of Assistant Attorney General within the Office of Legal Counsel of the Department of Justice.

Doug Kmiec first came to Washington, DC, in 1982 when he was selected to serve as a White House Fellow and Special Assistant to Housing and Urban Development Secretary Samuel R. Pierce, Jr. At the end of this year-long program, he returned to Notre Dame Law School to resume his teaching responsibilities there.

Professor Kmiec has since taken leave from his tenured faculty position to serve in several capacities in the Department of Justice, most recently as Acting Assistant Attorney General in the Office of Legal Counsel, where he shares the role of chief legal adviser to the Attorney General and the executive branch.

Doug Kmiec has had a varied and impressive career in the areas of law and government service. He is a scholar in his own right, graduating with honors from Northwestern University, and serving on the Law Review at the University of Southern California Law Center, where he received his juris doctorate in 1976.

Doug Kmiec has published widely in various law journals. He has authored several books and many articles within his areas of expertise, including property, land use and constitutonal law.

For several years, he hosted a weekly public affairs television show, which aired on a PBS affiliate. Doug started his professional career as an associate attorney with a large Chicago law firm, engaging in corporate and real property work. He went on to become a full-time professor of law, first at Valparaiso University Law School, and for a time at Indiana University Northwest, and finally in his current capacity as Professor of Law and Director of the Center on Law and Government at the University of Notre Dame Law School. Each of these great institutions is located in my home State of Indiana.

Doug also spent 1987 as a 40th anniversary distinguished Fulbright Scholar, lecturing in several Asian countries on the U.S. Constitution. He is a member of the bar in both Illinois and California. He has been admitted to practice before the U.S. Supreme Court, the U.S. Court of Appeals for the D.C. Circuit, and the U.S. Federal District Court for the Northern District of Illinois.

He is also active within the Association of American Law Schools and one of the very few individuals who has received the Distinguished Service Award from two Cabinet departments, the Department of Justice and the Department of Housing and Urban Development. This bodes well for his future performance at the Department of Justice as he faces new challenges.

He is a devoted husband to his wife Carolyn Keenan Kmiec and father of three children, Keenan, Katherine, and Kiley, who are with us here in the hearing room today. He has been an involved member of his community, volunteering his legal expertise to assist low-income families in finding affordable housing and providing counsel on local government and community issues.

Mr. Chairman, it is an honor to introduce him and I urge you and your colleagues to give favorable consideration to his nomination. Thank you.

Senator KENNEDY. Thank you very much, Senator Lugar. We have, as you know, very high regard for your impressions and for your representations and your comments. The nominee is well-served by those comments. We know that you have a full program, so we will excuse you, if you feel so inclined, and thank you.

Senator LUGAR. Thank you, Mr. Chairman.

Senator KENNEDY. Congressman Hiler, we would be delighted to hear from you.

STATEMENT OF HON. JOHN HILER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA

Mr. HILER. Thank you, Mr. Chairman. I am happy to have the opportunity to sit before you today to express my support for the nomination of Douglas W. Kmiec to the position of Assistant Attorney General for the Office of Legal Counsel at the U.S. Justice Department.

His fine record of achievement in both academic and governmental circles, coupled with his strong sense of character and integrity, give him the tools to serve the Justice Department and our country well.

As a Member of Congress who represents Doug in Washington, I am well aware of his excellent record of achievement at several of our State's finest law schools. He is on leave from the Directorship of the Center on Law and Government at Notre Dame University and, at the same time, is serving as Acting Assistant Attorney General, Office of Legal Counsel, at the Justice Department. Prior to this, Doug held professorships at Valparaiso University and Indiana University Northwest.

In addition, Doug served as a White House Fellow in 1982 and served with distinction as Special Assistant to the Secretary, U.S. Department of Housing and Urban Development. Further, he has earned the Distinguished Service Award from both the Department of Housing and Urban Development in 1983 and the Justice Department in 1987.

A prolific author of several books and articles on everything from constitutional law to racial discrimination, Mr. Kmiec was selected in 1987 as a 40th Anniversary Fulbright Distinguished Scholar, and has toured several countries in Asia lecturing on the U.S. Constitution. Mr. Kmiec is a member of the bar of the U.S. Supreme Court, and the State bars of Illinois and California.

An individual of outstanding legal ability, coupled with the virtues of integrity and strong moral character, is always a valuable asset in governmental service. As stated, given his strong background in our judicial system in both the public and private sectors, I am confident of Doug's ability to render outstanding service as an Assistant Attorney General, and I am delighted at his nomination to this post.

Mr. Chairman, once again I would like to thank you for the opportunity to say a few words on behalf of my friend, Doug Kmiec.

Senator KENNEDY. Thank you very much for taking the time to come over from the House and join us today in presenting the nominee.

We also have some very kind comments and words of commendation from Father Theodore Hesburgh who wrote me a personal letter about the nominee and some other matters. I would include parts of the letter that refer to the nominee's qualifications as part of the record.

[The excerpt referred to follows:]

University of Notre Dame
Notre Dame, Indiana 46556

President Emeritus

13th Floor, Memorial Library

July 27, 1988

Honorable Edward M. Kennedy
United States Senate
Washington, D. C.

Dear Ted:

I am writing to recommend that you give swift approval to the nomination of Professor Douglas W. Kmiec of our faculty to the post of Assistant Attorney General of the Office of Legal Counsel of the Department of Justice.

This is an important post requiring sensitivity and great legal ability, and I have every confidence that Doug will serve in this post with the highest distinction. A first-rate teacher and scholar of Constitutional Law, Doug has written many books and articles in this and related fields which indicate to me that he is an objective, even-handed lawyer and legal scholar. He has demonstrated a commitment to civil rights, working within the Law School to recruit minority and disadvantaged students and faculty. In addition, he has organized and participated in Fair Housing conferences and seminars in our community and around the country designed to ensure that affordable housing is available to every American family.

Throughout his career, Doug has shown a special appreciation for ethical questions. In this regard, he is the founder of our Journal of Law, Ethics & Public Policy, which is the only law journal that I know of dedicated to exploring difficult issues of law and morality. This has been a troubled time for the Department of Justice, and I can think of no one better than Doug to bring stability to that Department and a renewed fidelity to the rule of law and principles of justice.

I would appreciate your consideration of this recommendation.

Sincerely yours,

Fr. Ted

(Rev.) Theodore M. Hesburgh, C.S.C.
President Emeritus

Senator **Kennedy**. Mr. Kmiec, if you would indulge us for just a moment. Before I ask you to introduce your family and then get into the hearing, I recognize some of our colleagues there and we are about to have some votes, if you would be good enough just to stand aside here.

I will ask Mr. Boyd if he would want to come up, and I see Senator Trible and Congressman Fish here. I would note that Representative Rodino had also wanted to be here and was unable to do so, and we will include his comments in the record as well.

[The statement of Mr. Rodino follows:]

STATEMENT OF THE HON. PETER W. RODINO, JR.
BEFORE THE SENATE COMMITTEE ON THE JUDICIARY

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I AM PLEASED TO APPEAR HERE TODAY TO PRESENT TESTIMONY IN SUPPORT OF THE NOMINATION OF THOMAS BOYD TO BE ASSISTANT ATTORNEY GENERAL FOR LEGISLATIVE AND INTERGOVERNMENTAL AFFAIRS.

MR. BOYD SERVED WITH DISTINCTION FOR SOME 10 YEARS (1976-1986) AS A COUNSEL TO THE MINORITY OF THE HOUSE COMMITTEE ON THE JUDICIARY. DURING HIS TENURE ON THE COMMITTEE, HE WAS STAFF COUNSEL TO 3 SEPARATE SUBCOMMITTEES, INCLUDING CIVIL AND CONSTITUTIONAL RIGHTS, IMMIGRATION, AND MY SUBCOMMITTEE ON MONOPOLIES AND COMMERCIAL LAW.

I FOUND MR. BOYD TO BE A HARD-WORKING, COMPETENT AND CONSCIENTIOUS LAWYER AND ONE WHO PLAYED A CONSTRUCTIVE ROLE IN DEALING WITH THE IMPORTANT LEGISLATION CONSIDERED BY THESE SUBCOMMITTEES. HE ALWAYS DISCHARGED HIS RESPONSIBILITIES IN A THOROUGH AND PROFESSIONAL MANNER.

MR. BOYD IMPRESSED ME AS AN EFFECTIVE ADVISOR TO HIS MINORITY MEMBERS, AS WELL AS A VALUABLE STAFFER FOR THE ENTIRE COMMITTEE. HE WAS A DILIGENT AND PROBING LAWYER, WHO POSSESSED A KEEN UNDERSTANDING OF PARLIAMENTARY PROCEDURES AND THE LEGISLATIVE PROCESS.

Mr. Boyd left the Committee in 1986 to accept an appointment as Deputy Assistant Attorney General in the Office of Legislative and Intergovernmental Affairs. While serving in that capacity, he has worked extremely hard to develop a close working relationship between the Department of Justice and the House Judiciary Committee.

His Hill experience and his wide-range of legislative responsibilities on the House Judiciary Committee certainly qualify him for the position for which he has been nominated.

If Tom Boyd is confirmed for this position, I am confident that his background and qualifications will help in strengthening the liaison between the Justice Department and the Congress.

In closing, I want to thank the Committee for providing me this opportunity to express my support for Tom Boyd's nomination and I am certain that favorable action by your Committee and the Senate will prove to be beneficial for both the Congress and the Department of Justice.

Senator KENNEDY. I now recognize Senator Trible. We are glad to have you with us today.

STATEMENT OF HON. PAUL S. TRIBLE, A U.S. SENATOR FROM THE STATE OF VIRGINIA

Senator TRIBLE. Mr. Chairman, I thank you very much.

My colleague from Virginia John Warner and I are now engaged in a committee meeting on a matter of particular importance to Virginia, and so he hopes to join us, but in his absence at this moment, I would like to offer his statement in support of Tom Boyd, and add some words of my own.

It is a particular pleasure, Mr. Chairman, for me to be here today with my friend and fellow Virginian Tom Boyd. Tom is a graduate of two of Virginia's finest law schools, VMI, Virginia Military Institute, and the Law School at the University of Virginia, where the Chairman spent some time as well.

I have known him for many years, first when I served in the U.S. Congress, the House of Representatives. I have known him as a neighbor and constituent and, more recently, as a U.S. Senator as he has worked in the Justice Department.

He is an outstanding choice to serve as the Assistant Attorney General for Legislative Affairs. He has served as Acting Assistant, as you know, for 6 months. For 2 years prior to that, he was Deputy Assistant to the same office, and for a decade prior to that he was an Associate Counsel for the House Judiciary Committee. That is where we first met, and that, of course, is the basis of his association of Ham Fish and Peter Rodino, and they can speak much more eloquently than I about the quality of this man.

Tom Boyd possesses I think every quality that the Senate should look for in a candidate for this high office. He has extensive experience in both the legislative and executive branches of government, an in-depth understanding of the proper relationship between the Congress and the administration, and most important, the trust and confidence of those he has dealt with through the years.

I would like to add one personal note, which I think says much about the man. A number of years ago, in 1985, Tom Boyd, who is a student of history and a man who has a real sense of humanity, brought to my attention the many contributions of a black Virginian named T.C. Walker, now long-deceased. He was a civil rights spokesman when it took rare courage to step forward in the Old Dominion, who vigorously advocated education, land ownership for black Virginians, and was a real leader and yet he had gone unnoticed and unacclaimed. Tom brought that to my attention and, together, we brought the matter to the attention of the State Government of Virginia, and there is now a fitting memorial to the man, but most importantly, to his contribution to our community.

Tom Boyd is here today, along with his wife Carol, Mr. Chairman, and their two young children, Brooke and Tyler. I know him to be a loving and caring father, as well as a professional and accomplished lawyer, someone who has already made a substantial contribution and someone who will work well with the Congress.

I thank you for your consideration and urge the committee to act promptly.

Senator **Kennedy**. Thank you very much, Senator Trible. You are good to give us those words of commendation and high praise for the nominee. We thank you very much for coming.

We will insert the prepared statement of Senator Warner in the record at this point.

[The statement of Senator Warner follows:]

STATEMENT OF THE HONORABLE JOHN WARNER BEFORE THE SENATE JUDICIARY COMMITTEE ON THE NOMINATION OF THOMAS M. BOYD AS ASSISTANT ATTORNEY GENERAL OF THE DEPARTMENT OF JUSTICE

SEPTEMBER 8, 1988

MR. CHAIRMAN, IT IS ALWAYS A PLEASURE TO APPEAR BEFORE THIS COMMITTEE TO INTRODUCE A FELLOW VIRGINIAN AND CONSTITUENT.

I AM PARTICULARLY PLEASED AT THE PRESIDENT'S NOMINATION OF THOMAS MARSHALL BOYD BECAUSE HE IS A NATIVE VIRGINIAN AND ATTENDED TWO OF THE COUNTRY'S FINEST EDUCATIONAL INSTITUTIONS WHICH ARE LOCATED IN THE COMMONWEALTH -- VIRGINIA MILITARY INSTITUTE AND THE UNIVERSITY OF VIRGINIA.

I WILL NOT IMPOSE UNDULY ON THE COMMITTEE'S VALUABLE TIME, BUT I DO WANT TO BRING THE MEMBERS ATTENTION TO THE LONG AND IMPRESSIVE LIST OF ACCOMPLISHMENTS WHICH TOM COMPILED WHILE AT VMI AND UVA.

FOLLOWING LAW SCHOOL, MR. BOYD SERVED AS A SPECIAL AGENT FOR THE AIR FORCE OFFICE OF SPECIAL INVESTIGATIONS AT THE RANK OF FIRST LIEUTENANT IN THE UNITED STATES AIR FORCE. UPON COMPLETION OF HIS MILITARY SERVICE HE SERVED AS LAW CLERK TO THE HONORABLE A. ANDREW HAUK, CHIEF JUDGE, UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA.

MR. BOYD BRINGS EXCEPTIONAL QUALIFICATIONS TO THE POSITION FOR WHICH HE HAS BEEN NOMINATED -- ASSISTANT ATTORNEY GENERAL FOR LEGISLATIVE AND INTERGOVERNMENTAL AFFAIRS OF THE DEPARTMENT OF JUSTICE. SINCE MARCH OF THIS YEAR, MR. BOYD HAS SERVED IN THIS POSITION AS ACTING ASSISTANT ATTORNEY GENERAL AND FOR TWO YEARS PRIOR TO THAT SERVED AS DEPUTY ASSISTANT ATTORNEY GENERAL FOR LEGISLATIVE AND INTERGOVERNMENTAL AFFAIRS.

IN ADDITION, AS OUR COLLEAGUES FROM THE HOUSE OF REPRESENTATIVES WILL TESTIFY, MR. BOYD SERVED AS ASSOCIATE COUNSEL FOR THE HOUSE COMMITTEE ON THE JUDICIARY BETWEEN 1976-1986. THIS WEALTH OF EXPERIENCE PROVIDES MR. BOYD WITH THE NECESSARY KNOWLEDGE OF THE CONGRESS AND ITS WORKINGS TO MAKE HIM AN EFFECTIVE LIAISON BETWEEN THE DEPARTMENT OF JUSTICE AND CONGRESS.

TOM IS HERE TODAY WITH HIS WIFE, CAROL AND THEIR TWO CHILDREN, BROOKE WARNER BOYD AND TYLER RANDOLPH BOYD, AND I WOULD LIKE TO TAKE THIS OPPORTUNITY TO WELCOME THEM.

Senator KENNEDY. We will recognize our very distinguished colleague from the House of Representatives and the House Judiciary Committee, Congressman Fish, with whom those of us on the Judiciary Committee have enjoyed a long and a very positive and constructive relationship on a number of very important issues over a long period of time.

We welcome you, Congressman Fish, to the hearing and we look forward to whatever comments you might make.

STATEMENT OF HON. HAMILTON FISH, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. FISH. Thank you, Mr. Chairman. I appreciate the opportunity to be here to strongly endorse the nomination of Thomas M. Boyd, Esq., for the post of Assistant Attorney General for the Office of Legislative Affairs, U.S. Department of Justice.

Tom and I have been professional and personal friends for over 10 years. As the ranking Republican Member of the House Judiciary Committee, I am particularly proud that an "alumnus" of our minority staff has continued his public service in such a distinguished manner.

By way of background, briefly, Tom received his law degree from the University of Virginia, and prior to that was graduated with honors from VMI. He was admitted to the California bar and to the District of Columbia bar.

Included among his legal credentials are service in the U.S. Attorneys Office in the District of Columbia, service as a law clerk to a U.S. District Court judge in California, and trial work with the Civil Rights Division of the Department of Justice.

He has also demonstrated legal scholarship by authoring articles published in the Journal of the American Bar Association, the Washington & Lee University Law Review, and the Criminal Law Annual of the Virginia Bar Association.

In July of 1976, Tom left the Office of Legislative Affairs at the Department of Justice to join the minority staff of the House Judiciary Committee. During his 10 years of service on our staff, Tom served as the minority counsel, at different times, to four subcommittees, and I worked with him closely on a number of major legislative initiatives, most notably the Voting Rights Act Amendments of 1982, the Bankruptcy Reform Amendments of 1984, and the Immigration Reform and Control Act of 1985–86. Senator Kennedy, you and I might call that the Immigration Reform and Control Act of 1980 to 1986, but the final date was 1986.

Tom's important contributions to the legislative work product of the House Judiciary Committee during his 10 years cannot be overstated. He is an accomplished and skilled lawyer, with a genuine sense of fairness. He was liked and respected by the members of the committee, as well as his staff colleagues.

In March of 1986, Tom rejoined the Department of Justice as the Deputy Assistant Attorney General for the Office of Legislative Affairs and continued in that capacity for 2 years. Since March of this year, Tom has done an effective and efficient job in the role of Acting Assistant Attorney General in a time of stress and transition for the Department.

By both professional experience and personal temperament, Tom Boyd is highly qualified for this important office. I sincerely hope that this committee and the full Senate will promptly confirm this excellent nominee.

Again, Mr. Chairman and members of the committee, I greatly appreciate the opportunity to be here today, to express my strong personal support for the nomination of Tom Boyd.

The chairman of our committee, Chairman Rodino, is on the House floor because we are considering the Omnibus Drug bill. I have his statement, which can be made a part of the record, as you said, but I would like to quote just two brief paragraphs, one which refers to the Judiciary Committee activities, in which he says:

> Mr. Boyd impressed me as an effective advisor to his minority Members, as well as a valuable staffer for the entire committee. He was a diligent and probing lawyer, who possessed a keen understanding of parliamentary procedures and the legislative process.

And with respect to the position he is now here for consideration, he says:

> If Tom Boyd is confirmed for this position, I am confident that his background and qualifications will help in strengthening the liaison between the Department of Justice and the Congress.

Thank you, Mr. Chairman.

Senator **Kennedy**. Thank you very much, Congressman.

We note, as the two good nominees understand very clearly, that we have got about 5 or 6 minutes left to vote on an amendment, so we will recess and then we will go forward with the hearing with Mr. Kmiec as our first witness.

We will stand in recess.

[Short recess.]

Senator **Kennedy**. The committee will come to order.

We will now ask Mr. Kmiec if he would be kind enough to come forward.

Before moving ahead, we would like to ask you if you would introduce your family. We saw them all here a little while ago.

TESTIMONY OF DOUGLAS W. KMIEC, OF INDIANA, TO BE ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL COUNSEL, U.S. DEPARTMENT OF JUSTICE

Mr. **Kmiec**. I would be delighted. This is my wife, Carol; my oldest son Keenan, and my daughter Katherine, and my youngest son Kiley. Number four is due in December, and I guess we will be happy to supplement the record with the name. [Laughter.]

Senator **Kennedy**. It would appear that his or her name would start with a "K."

Mr. **Kmiec**. There is a pattern.

Senator **Kennedy**. We welcome all of them and thank them for their patience.

Is there any comment that you would like to make?

Mr. **Kmiec**. Well, I would like to thank——

Senator **Kennedy**. Would you stand, please, and we will swear you in.

Do you swear that the testimony you give will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. KMIEC. I do.

Senator KENNEDY. Okay.

Mr. KMIEC. I would like to thank the Senator and the committee for taking the time in a very busy legislative season to consider this nomination and to do me the honor of inquiring into my background and suitability for this post.

Senator KENNEDY. You have had a distinguished record as a legal scholar, and I congratulate you on your nomination to this position of very great significance in the Department of Justice. The Assistant Attorney General in charge of the Office of Legal Counsel is the lawyer's lawyer in the Department. The Legal Counsel is charged with giving advice to the Attorney General and other Department personnel on questions of law that arise in the Department of Justice, and he is responsible for assisting the Attorney General in providing legal advice to the President and to the executive branch.

The Government is not above the law. It is critically important that the Legal Counsel have not only the finest legal skills but also the independence and integrity to advise the Attorney General when a proposed course of action would be against the law.

Mr. Kmiec, will you give the committee your assurance that, if confirmed as Assistant Attorney General, you will fairly interpret the law, and if you conclude that a proposed action is unlawful or unconstitutional, will you communicate that conclusion to the Attorney General?

Mr. KMIEC. Yes, sir, without question. The Office of Legal Counsel has a long tradition of providing candid and objective advice, notwithstanding the fact that it sometimes disappoints the recipient of that advice. I intend to maintain that tradition.

Senator KENNEDY. You have written extensively on a number of subjects in connection with your service at the Department of Housing and Urban Development. You have supported the passage of stronger fair housing laws, a point on which Congress has now expressed its overwhelming approval with the passage of the Fair Housing Amendments Act of 1988.

You have also written about the separation of powers, and I know that you have warned against the dangers that can result when the executive and legislative branches have a harsh adversarial attitude. In a 1987 article, you wrote, "An overly adversarial attitude which insists upon a precise demarcation of powers in matters of every significance, thrives upon a level of confrontation which neither is in keeping with the intent of the framers nor is necessarily conducive to good government." That is in the Catholic Law Review, vol. 37, page 72 (1987).

In the last few years, this committee has found itself at loggerheads with the Department of Justice over separation of powers questions, and I am pleased to see that you have taken a more conciliatory approach in your writings. Your views on a number of other legal issues, however, are considerably different from my own, but that should not imperil your nomination. The President is certainly entitled to select for executive branch positions persons whose views are compatible with his philosophy.

There is one area on which you have written about which I would like to ask you a few questions. As you know, the staff contacted the Department yesterday to advise you about the subject of the questions I am interested in your published views that courts should give weight to the interpretation expressed by the President when he signs a piece of legislation. That is a somewhat controversial view, because when taken to the extreme it would permit the President to undercut the Congress' constitutional responsibility to write the laws.

You have written a number of articles supportive of the use by the courts of presidential signing statements in interpreting statutes. I will place them in the record. Would you summarize for us what you believe is the appropriate use of such statements by the courts?

[Aforementioned articles follows:]

THE NATIONAL
LAW JOURNAL

DATE: 11/10/86
PAGE: 13

Judges Should Pay Attention To Statements By President

BY DOUGLAS W. KMIEC
Special to The National Law Journal

THE DEPARTMENT of Justice has undertaken an effort to highlight the importance of presidential signing statements to the law-making and law-enforcement process. To this end, the attorney general has persuaded the West Publishing Co. to include these statements in the "U.S. Code Congressional and Administrative News."

In addition, the Justice Department contemplates more searching review of draft signing statements before their submission with an enrolled bill to the president.

While these measures are important insofar as they will increase the care with which such statements are drafted and their availability, they cannot be fairly characterized, as they were recently in this publication,[1] as an effort by the executive to encroach on legislative and judicial functions in derogation of the constitutional doctrine of separation of powers.

The suggested characterization ignores the long history of presidential signing statements, misperceives their purpose, and fundamentally misunderstands the Constitution.

HISTORICALLY, the use of presidential signing statements can be traced back at least to 1830 when President Andrew Jackson employed the device to give his interpretation of a road appropriation measure. President Jackson was concerned that the measure could be interpreted as extending to an area beyond the Michigan territory, to which he objected. Recognizing the need for the appropriation, President Jackson signed it, but noted: "I desire to be understood as having approved this bill with the understanding that the road authorized by this section is not to be extended beyond the limits of said territory."[2]

There are many similar statements, such as that by President Ulysses S. Grant approving an appropriations bill in 1876 conditioned on the fact that there would be no expenditure "not clearly national."[3]

However, these two illustrations are enough to suggest one of the most important purposes for such statements: namely, as a presidential directive to subordinate executive officers in their implementation of statutes that, by virtue of the imprecision of language or legislative compromise, often are vaguely worded.

The president has a constitutionally imposed duty to "take Care that the Laws be faithfully executed."[4] Part of that responsibility surely includes the direction of subordinate officers — and a signing statement is but one means of providing that direction. Statutes do not enforce themselves.

Thus, any suggestion that a president's understanding is "constitutionally irrelevant"[5] ignores the unassailable fact that the president as chief executive officer of the government oversees his subordinates in numerous ways. For example, in the rule-making process as well as federal litigation, the executive's understanding of statutory authority necessarily is paramount. That signing statements provide this direction, as well, is evident from those occasions on which the statements are cited by agencies in their regulations.[6]

Signing statements also provide the executive with an important opportunity to communicate with the Congress as part of the law-making process. On an informal level, the executive branch has an ongoing dialogue with the national Legislature. Drawing on the expertise of affected departments, the executive provides both legal and policy comments directly to Congress with respect to pending legislation. Such comments frequently find their way into a signing statement, thereby effectively memorializing an understanding shared by both the legislative and the executive branches at the time a bill is enacted.

Thus, it is not uncommon to encounter congressional correspondence concurring in the interpretation given to statutes by the president in a signing statement. Similarly, a signing statement may be the best occasion for the president to articulate a need for additional legislation related to that presented. The executive obligation to recommend such legislation as the president deems "necessary and expedient" is itself constitutionally provided.[7]

Mr. Kmiec is the deputy assistant attorney general in the Office of Legal Counsel of the U.S. Department of Justice and a professor of law (on leave) at the University of Notre Dame.

Cont'd.

ON A FORMAL level, the Supreme Court has acknowledged the president's role in the lawmaking process, noting that "it is beyond doubt that lawmaking was a power to be shared by both Houses and the President." Justice Joseph Story reaffirms this point in his famous commentaries on the Constitution.

Moreover, Justice Felix Frankfurter plainly stated in 1948 that when the court reviews legislation, it is reviewing "the product of both Houses of Congress and the President." It is simply too late in the day to assert that the constitutional requirement of presentment does not ensure the president a role in the legislative process. True, the president's role is a carefully limited one, but also one designed by the framers to "increase the chances in favor of the community against the passing of bad laws, through haste, inadvertence, or design."

Now this, of course, does not mean that the president can supply additional terms to legislation or adopt an interpretation that would do violence to the terms provided. As already mentioned, this would contradict the president's very obligation to faithfully execute the laws. Should a president depart from this practice, his actions are not "uncheckable," as court challenges or new legislation or both are likely and formidable correctives. While this point may seem axiomatic, failure to comprehend it can lead to the erroneous conclusion that a signing statement "allows the president to substitute his judgment for that of both Congress and the judiciary."

Difficult cases do arise, however. This is especially true where the president concludes that legislation is vital to the nation's well being but is, in part, of questionable constitutionality. While a strong policy objection or pervasive unconstitutionality can be easily satisfied with a veto, this blunt instrument of disapproval comports less well with legislation for which there is great necessity or that contains serious, but less extensive, constitutional problems.

Many presidents have confronted this dilemma. For example, notwithstanding a constitutional objection pertaining to the termination of the Lend Lease Act of 1941 by concurrent resolution, President Franklin D. Roosevelt signed the act in view of the urgent defense needs of Great Britain. More recently, President Reagan similarly highlighted the constitutional infirmities in the Gramm Rudman legislation:

> I am mindful of the serious constitutional questions raised by some of [the bill's] provisions. The bill assigns a significant role to the Director of the Congressional Budget Office and the Comptroller General in calculating the budget estimates that trigger the operative provisions of the bill. Under the system of separated powers established by the Constitution, however, executive functions may only be performed by officers in the executive branch. The Director of the Congressional Budget Office and the Comptroller General are agents of Congress, not officers in the executive branch.

Despite these serious misgivings, President Reagan signed the bill because of his belief that "deficits have threatened our economic well-being for too long." The president's constitutional concerns were well founded as the Supreme Court's decision to invalidate the statute in *Bowsher v. Synar* reveals. Significantly, the court cited the president's signing statement in the course of rendering its decision.

The approval of legislation with constitutional reservations necessarily means that executive actions will not be immediately taken to enforce the suspect provisions. If such non-enforcement is challenged, whether the president's judgment is ultimately vindicated, as it was with Gramm-Rudman, will depend on the considered judgment of the judiciary.

Again, a recognition of the conclusive role played by the judiciary illustrates the sophistry of any claim that a signing statement "seizes" or "treads heavily upon the concept of an independent judiciary." Whether a court *should* rely on a signing statement in a given case depends on the context, as I briefly discuss below, but there can be no claim — and there is none by anyone — that a court *must* rely.

JUDICIAL reliance on signing statements is most logical where the parties before the court dispute the past interpretation given a provision by the executive branch, itself.

The most notable example of such a case occurred when the assertion was made that the executive had acquiesced in the congressional use of the legislative veto by signing and enforcing laws containing the device. The Supreme Court in *INS v. Chadha* properly rejected the argument by noting that "11 Presidents, from Mr. Wilson through Mr. Reagan . . . have gone on record at some point to challenge the congressional vetoes as constitutional."

Use of a presidential signing statement by a court in this context can also be likened to the commonplace judicial reliance on the interpretations and application of ambiguous statutes by administrative agencies, department heads and others charged with the duty of enforcement and administration. As the Supreme Court stated in a case considering the definition of "fos-

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ter family home" under the Aid to Families With Dependent Children program: "The interpretation of a statute by an agency charged with its enforcement is a substantial factor to be considered in construing the statute."[23]

As indicated, the appropriateness of relying on a signing statement, or for that matter any extrinsic evidence of intent, depends on the particular statute under review. Few courts rely on extrinsic materials when the intrinsic structure of the legislation or conventional dictionary meanings suffice. Only if these are inadequate to the task are signing statements, committee reports, floor statements and prior or related statutes examined.

The relative weights that should be assigned to these materials is a matter of some dispute. While it is certainly possible to argue that the words of individual legislators are entitled, as drafters, to considerable deference, the Supreme Court has said these statements are not necessarily controlling because the proper test is not what individual legislators thought, but the consensus of the Congress as a whole.[24]

In this sense, the president's intent, as a participant in the law-making process, is more ascertainable insofar as it avoids the rhetorical fallacy of "collective intent." Moreover, history reveals that judicial reliance even on legislative intent is a far more modern-day practice than is often assumed. In his long tenure on the court, for example, Chief Justice John Marshall avoided reliance on congressional debates.[25] In this century, Justice Oliver Wendell Holmes was of much the same view,[26] and Justice Antonin Scalia has recently expressed his wariness of legislative material, especially where a committee report seems contrived to shade or alter the meaning of a statute enacted by an earlier Congress.[27]

OBVIOUSLY, none of this is meant to denigrate the importance of congressional sources. Recognition of the relevance of presidential signing statements as an aid to either executive decision-makers or the judiciary in ascertaining the meaning of a statute does not require the displacement of other material that may be equally relevant in a given case.

However, numerous presidents and the courts have been mindful of the value of presidential signing statements. The attorney general's recent efforts to have them more carefully reviewed and more widely disseminated coincides with that historic practice. It is entirely in keeping with our constitutional structure.

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(1) Garber & Wimmer, "President's Statements at Signings No Help to U.S. Judges," Nat'l L.J., Sept. 1, 1986, at 15, col. 1.

(2) 2 Messages and Papers of the Presidents, 1789-1897, 460 (J. Richardson 1896).

(3) 7 Id., at 377.

(4) U.S. Const. art. II, Sec. 3.

(5) Garber & Wimmer, supra n.1, at 15, col. 2.

(6) See, e.g., 28 C.F.R. 79.34(e) (1986).

(7) U.S. Const. art. II, Sec. 2.

(8) INS v. Chadha, 462 U.S. 919, 947 (1983).

(9) Justice Story wrote: "In the convention there does not seem to have been much diversity of opinion on the subject of the propriety of giving to the president a negative on the laws. The principal points of discussion seem to have been, whether the negative should be absolute, or qualified, and if the latter, by what number of each house the bill should subsequently be passed, in order to become a law; and whether the negative should in either case be exclusively vested in the president alone, or in him jointly with some other department of the government." 1 J. Story, Commentaries on the Constitution of the United States 611 (3d ed. 1858).

(10) U.S. v. Lovett, 328 U.S. 303, 324-26 (1946) (concurring opinion).

(11) See 1 W. Blackstone, Commentaries 154 (1st Amer. ed. 1771) ("The executive power should be a branch, though not the whole, of the legislature.")

(12) The Federalist No. 73, 443 (C. Rossiter ed. 1961); cf. Chadha, 462 U.S. at 947-948 (President may "check whatever propensity a particular Congress might have to enact oppressive, improvident, or ill-considered measures.")

(13) Garber & Wimmer, supra n.1, at 15, col. 2.

(14) Id. at 42, col. 1.

(15) See, Jackson, "A Presidential Legal Opinion," 66 Harv. L. Rev. 1353 (1953).

(16) 21 Weekly Comp. Pres. Papers 1490, 1491 (1985) (statement on signing H. J. Res. 372 into law).

(17) Id.

(18) 106 S. Ct. 3181 (1986).

(19) Id. at 3185 n.1.

(20) Garber & Wimmer, supra n.1, at 42, col. 1.

(21) 462 U.S. 919 (1983).

(22) Id. at 942 n.13.

(23) Miller v. Youakim, 440 U.S. 125, 144 (1979) (citations omitted).

(24) Weinberger v. Rossi, 456 U.S. 25, 35 n.15; Chrysler Corp. v. Brown, 441 U.S. 281, 311 (1979).

(25) Powell, "The Original Understanding of Original Intent," 98 Harv. L. Rev. 885, 943 (1985).

(26) Holmes, O.W., "The Theory of Legal Interpretation," in Collected Legal Papers, 203, 207 (1920).

(27) See Hirschey v. FERC, 777 F.2d 1, 7 (D.C. Cir. 1985) (Scalia, J., concurring) ("I frankly doubt that it is ever reasonable to assume that the details, as opposed to the broad outlines of purpose, set forth in a committee report come to the attention of, much less are approved by, the house which enacts the committee's bill.")

OF BALKANIZED EMPIRES AND COOPERATIVE ALLIES: A BICENTENNIAL ESSAY ON THE SEPARATION OF POWERS*

*Douglas W. Kmiec***

The delegates to the Constitutional Convention in Philadelphia in 1787 brought two experiences with them: a substantial dislike for the tyrannical behavior of an English King and a profound disappointment with the weaknesses of the Articles of Confederation. They knew well, from their study of Locke and Montesquieu, that "[t]he accumulation of all powers, legislative, executive, and judiciary, in the same hands, . . . may justly be pronounced the very definition of tyranny."[1] Yet, the framers' most recent experience, under the Articles of Confederation, had replaced the tyranny of the King with an ineffectual central legislature largely subservient to state legislative bodies. Royal supremacy had given way to "the supremacy of faction and the tyranny of shifting majorities."[2]

Out of the twofold desire to avoid tyranny, in whatever form, and to retain a workable government, arose the dynamic of separated powers in conjunction with clearly stated checks and balances. The first three Articles of the Constitution assign primary, but not unrestrained, authority for the legislative, executive, and judicial functions to the two Houses of Congress,[3] the President,[4] and the Supreme Court,[5] respectively. These functions are not neatly separated or "hermetically sealed." Congress passes open-textured statutes which invariably invite both the President and the courts to fill in the gaps, and thus, make law. Similarly, members of Congress and the President are regularly called upon to determine issues of constitutionality, and thus, interpret law.

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* Brendan Brown Lecture, The Catholic University of America, Columbus School of Law, September 17, 1987. Professor Kmiec also extends his appreciation to the Board of Foreign Scholarships which permitted him to present earlier versions of these thoughts as a Fulbright Distinguished Scholar in Hong Kong and Malaysia.

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[1] THE FEDERALIST No. 47, at 301 (J. Madison) (Mentor ed. 1961).

[2] Levi, *Some Aspects of Separation of Powers*, 76 COLUM. L. REV. 371, 375 (1976).

[3] U.S. CONST. art. I.

[4] *Id.* art. II.

[5] *Id.* art. III.

That the functions of government do indeed overlap suggests the futility of rigid theoretical insistence upon a precise separation of power. It also reveals the justification for the framers' reliance upon procedural checks and balances, rather than substantive and inflexible definitions of authority, to preserve their tripartite structure. These checks and balances are well-known. They include the President's ability to veto legislation[6] and Congress' countervailing authority to override that disapproval with the concurrence of two-thirds of both Houses of Congress.[7] The judiciary is checked by Congress' ability to determine the kind of cases which may be brought to court,[8] and even, with the exception of the Supreme Court, to eliminate the federal courts.[9] Judicial authority is also bounded by the practical willingness of the executive to enforce judicial decisions. In turn, the courts have the final word with respect to the propriety and constitutionality of both executive decisions and legislation.

Over the long term, these procedural checks and balances have been essential safeguards against improvidently passed laws, the obduracy of the executive, and even the inclination of the judiciary, the so-called "least dangerous branch," to go beyond its assigned function of adjudicating cases and controversies. With respect to the judicial branch, it is popular today to level criticism at the courts for the usurpation of the lawmaking function. Some of this criticism is justified, some not. I do not intend to enter the debate, for in my judgment most judges conscientiously aspire to ascertain the will of the legislature and not to impose their own. Significantly, on two occasions within the last five years[10] the Supreme Court has properly rejected claims that the modern day realities of government necessitate departure from what the Court has described as a "single, finely wrought and exhaustively considered, procedure"[11] set out by the framers. Constitutional structure and procedure did not give way to expediency, and this, in itself, is a tribute to the Court's ability to say what the law is.

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[6] The Constitution of the United States provides:

> Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to the House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it.

Id. art. I, § 7, cl. 2.

[7] The Constitution of the United States provides: "[I]f after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law." *Id.*

[8] The Constitution of the United States provides:

> In all cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a Party, the Supreme Court shall have original Jurisdiction. In all other cases before mentioned, the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

Id. art. III, § 2, cl. 2.

[9] The Constitution of the United States provides: "The judicial Power of the United States, shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." *Id.* art. III, § 1.

Yet, as important as the safeguards of divided power and its judicial acknowledgment have been, they are often eclipsed by the day-to-day tension yielded by the less definable essence of the separation of powers among the three branches. As will be discussed, this tension is greatest between the executive and the legislature.[12]

Before getting to actual disputes, however, it is worthwhile to spend a moment on this bicentennial of the Constitution to reflect upon whether the tension borne of the separation of powers serves us well or ill. In my judgment, the consequences of this imprecise concept must be viewed favorably. The tyranny, suffering, and loss of liberty associated with centralized power has not been a feature in the American political landscape. Moreover, the concept has been a necessary operational adjunct to a constitutional scheme premised on express grants of limited national power, and a reservation of authority to the states and the people themselves. To be sure, the interests and activities of the national government have expanded well beyond the conceptions of the framers, and arguably, beyond the express terms of the constitutional document itself. Nevertheless, these expansions into local decisionmaking would surely be greater if national authority were centralized in a single hand. At the very least, with national power divided, the sovereign states have multiple forums in which to seek redress from particular encroachments upon their interests and in which to find an amenable advocate for federalism.

Related to this point is the greater responsiveness of the government to the citizenry which results from separated powers. Ours is a nation of pluralism and, within that pluralism, deeply felt views. No one authority could possibly accommodate them all, and thus, bitter conflict is avoided by the very fact that no one authority can impose a singular resolution. That such conflict can and does result from the assertion of concentrated authority is amply demonstrated by the Supreme Court's decision in *Roe v. Wade*[13] where the court articulated a federal constitutional right to an abortion, contrary to the then-existing laws of most states and contrary to the current views of the President and a significant number of members of Congress. Because the powers of government are separated, however, those in opposition to the Supreme Court's decision in *Roe* have had their interests responded to by a congressional restriction on the use of federal money for abortions[14] and the President's recent announcement of executive rulemaking to carry out Congress' legislative mandate for a separation between preventive family planning programs, which may be federally funded, and abortion-related services, which may not.[15]

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[10] Bowsher v. Synar, 106 S. Ct. 3181 (1986); Immigration & Naturalization Serv. v. Chadha, 462 U.S. 919 (1983).

[11] *Chadha*, 462 U.S. at 951.

[12] *See infra* notes 30-52 and accompanying text.

[13] 410 U.S. 113 (1973).

Separation of powers also produces greater deliberation and specialization. A deliberative process which is subject to the scrutiny of competing powers is more likely to yield a course based upon consensus. It is also not unfair to say that legislators inhabiting the more heady regions of theory and policy are not usually the best administrators.

These benefits of the separation of powers, of course, do not come without cost. Subjectively, those who want the public sector to do more, not less, or those who are chary of the parochial views of the states are not likely to be pleased by the limitations of divided authority at the national level. So too, prolonged deliberation in search of consensus can mask inefficiency, and specialization may simply spawn labyrinthine bureaucracies.

The greatest cost, or if you will, danger to separated powers, however, lies in the occasionally extreme adversarial attitude it can produce.[16] Certainly, each branch must be wary of encroachment upon its authority, but surely not at the cost of losing sight of the common purposes of the Republic stated eloquently in the Constitution's preamble.[17] Nor should the general populace be misled into believing that every arguable encroachment triggers a constitutional crisis meriting gavel to gavel television coverage or the appointment of an independent counsel. The boundaries of power are far too imprecise to have them litigated like constitutional trespass actions.

An overly adversarial attitude, which insists upon a precise demarcation of powers in matters of every significance, thrives on a level of confrontation which neither is in keeping with the intent of the framers nor is necessarily conducive to good government. As former Attorney General and Professor of Law Edward Levi remarked, "[t]he branches of government were not designed to be at war with one another. The relationship was not to be an adversary one . . . ."[18] Similarly, the late Justice Robert Jackson observed that "[w]hile the Constitution diffuses power the better to secure liberty, it also contemplates that practice will integrate the dispersed powers into a workable government. It enjoins upon its branches separateness but interdependence, autonomy but reciprocity."[19]

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[14] 42 U.S.C. § 300a-6 (1982).

[15] 52 Fed. Reg. 33,210 (1987) (to be codified at 42 C.F.R. pt. 59) (proposed September 1, 1987).

[16] To some degree, this attitude is instinctive in government officials insofar as they naturally seek to expand their territorial authority. Such aggressiveness is further driven by the large number of lawyers in American government, who afterall, are taught not to accommodate, but to zealously advocate the interests of their client.

[17] The framers' common purposes for forming a republican form of government were "to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity." U.S. CONST. preamble.

As history and even current events demonstrate, members of any branch of government forget this lesson at their peril. President Truman forgot it when he seized steel plants without legislative authorization or inherent constitutional authority.[20] President Nixon did the same when he impounded or refused to spend funds authorized to be spent by Congress.[21] Congress overstepped its constitutional boundary when it sought to empower a largely legislative commission to enforce election laws through litigation,[22] and when it retained authority over the implementation of previously passed laws by means of the legislative veto.[23] In each case, there was a direct corrective reaction by the branch encroached upon or an indirect correction through the courts. In a sense, these corrections give proof to the genius of the framers' creation for thwarting even petty tyrannies. However, each occasion for correction does its own damage, just as something repaired never quite equals the vitality it had when new. Furthermore, in these corrections lie the seeds of greater hostility and suspicion. If historian Arthur Schlesinger is correct to suggest that modern Presidents have bordered on the imperial in undertaking military activity without a congressional declaration of war,[24] what is the proper characterization of the congressional response in the War Powers Act[25] or other statutory limitations on the President's constitutionally assigned role as Commander in Chief?[26]

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[18] Levi, *supra* note 2, at 391.

[19] Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 635 (1952) (Jackson, J., concurring).

[20] *See id.* at 582-89.

[21] *See* Train v. City of New York, 420 U.S. 35, 45-48 (1975) (Federal Water Pollution Control Act did not provide the President with discretion to withhold funds from allotment and obligation).

[22] *See* Buckley v. Valeo, 424 U.S. 1, 137-43 (1976).

[23] *See* Immigration & Naturalization Serv. v. Chada, 462 U.S. 919, 951-59 (1983).

[24] *See generally* A. SCHLESINGER, THE IMPERIAL PRESIDENCY (1973) (discussing military action within the President's role as Commander in Chief).

[25] War Powers Resolution §§ 1-9, 50 U.S.C. §§ 1541-1548 (1982).

[26] The Constitution of the United States provides: "The President shall be Commander

Action, reaction, counteraction—the process is inexorable and self-destructive. While undesirable, it is hardly an unnatural response for the executive branch to enshroud its foreign affairs in even greater secrecy—a secrecy that has apparently frustrated even chief executive review of foreign policy and a secrecy that is likely to invite unworkable proposals for a rigid compartmentalization of functions. Thus, failure to understand that the framers envisaged the separated branches of government not as balkanized empires but as cooperative allies designed to "achieve a harmony of purposes differently fulfilled"[27] leads to a divorce, rather than a separation of powers, and, in that, its own undoing.

The actual interplay of the separation of powers is colored by the institutional features of the branches and the personalities of those who inhabit them. I will leave the dissection of personalities to the biographers, but certain patterns are easily discerned. Lincoln's strong presidency was aided and abetted by the exigencies of the Civil War and the coincidence of single party domination of both the White House and Congress. The post-Civil War era returned power to the legislative branch until Theodore Roosevelt transformed the presidency into his "bully pulpit."[28] A period of equilibrium followed World War I until the economic emergency of the depression and the demands of World War II led to the domination of events by Franklin Roosevelt. With some exception, the executive maintained its preeminence until the Vietnam War reawakened congressional initiative. Congress enlarged its staff, undertook greater scrutiny of foreign policy, and internally reconstituted the budget process.

Watergate further weakened the presidency, and not just for President Nixon. As former Solicitor General Rex Lee commented, "Watergate had left its legacy, and part of that legacy was a diminution in the ability of the executive branch to withstand intrusions by Congress into an area that should have belonged to the executive: protection of official governmental secrets."[29] The Carter years saw continued congressional control, although excessive government spending, high unemployment, and a dramatic increase in inflation created public skepticism towards the legislative process as well.

President Reagan benefited from the public's disaffection with "legislative politics as usual" and also from a confluence of economic policies which

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in Chief of the Army and Navy of the United States, and of the Militia of the several States." U.S. Const. art. II, § 2, cl. 1.

[27] Levi, *supra* note 2, at 391.

[28] J. Conlin, The Morrow Book of Quotations in American History 253 (1984).

[29] R. Lee, A Lawyer Looks at the Constitution 49 (1981).

have led to lower tax rates and inflation, as well as economic expansion and new employment. The President's well-articulated strengthening of defense policies also seemed to bolster public confidence, although legitimate doubts linger in the shadow of an ever-larger national debt and a highly volatile stock market. Seemingly, the Iran-Contra matter disclosed in late 1986 once again recalibrated the executive/legislative balance. However, we may still be too close to these events to tell their actual effect. Somewhat unexpectedly, the inundation of televised committee proceedings, patently designed to crudely divide the good and able men from the evildoers, may have actually resulted in a greater public sophistication about the uneasy separation of powers in our constitutional Republic.

It is interesting to note the sharp differences between the Iranian inquiry and Watergate as it relates to congressional access to executive information. As a general matter, Congress was given virtually everything within the control of the executive branch that it had requested. In terms of a full accounting of the facts, this is surely salutary. Yet, the executive must necessarily have concerns, some of which are anchored in the separation of powers, lest this expedient response, dictated in part by the memories of Watergate, lead to the mishandling of classified information or perhaps damage specific and only tangentially related foreign policy efforts.

Some contemporary examples of conflict between the executive and legislative branches may further elucidate the separation of powers. For example, it is unassailable that Congress may undertake to investigate how we the executive is enforcing the law. Congress' authority is at its stronge when such oversight is directly in aid of its lawmaking function: to dete mine whether existing law needs revision or whether additional legislation required. In contrast, as Congress' interest moves away from lawmaking and toward mere supervision of executive personnel, a task committed by the Constitution to the President,[30] the separation of powers would argue for congressional restraint.

This has not always been the case, however, and such disputes often become manifest when the executive refuses to supply information to Congress under a claim of executive privilege. While executive privilege retains its negative connotation from the Watergate episode, it is important to remember that the Court in *United States v. Nixon,*[31] although unanimously requiring President Nixon to give up his tapes, clearly acknowledged that the privilege is "inextricably rooted in the separation of powers under the Constitution."[32] Like the nuances of the separation of powers, however, the privilege is qualified, and in *Nixon* it had to yield to a specific need for evidence in a criminal trial.[33] Thus, any claim of privilege balances the executive's need to protect information against Congress' or the Court's need to know that information as those needs are defined in relation to the powers assigned by the Constitution. Just as Congress' oversight role is most compelling in aid of its direct legislative function, so too, the executive's claim of privilege is greatest when it is premised upon the specific need to protect military, diplomatic, or sensitive national security information.

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[30] The Constitution of the United States provides: "The executive Power shall be vested in a President of the United States of America." U.S. CONST. art. II, § 1, cl. 1.

[31] 418 U.S. 683 (1974).

Another executive/legislative intersection occurred over the use of the so-called legislative veto. For almost sixty years in a great variety of legislative enactments, Congress had included provisions which authorized the executive to issue implementing regulations, but subject to the approval, or lack of disapproval, by one or both Houses of Congress or a committee. As a practical matter, the legislative veto was a device designed to usurp executive enforcement authority. For example, under the immigration laws, the executive was given the authority to determine matters of deportation.[34] In 1974, when the Attorney General exercised that authority in a manner displeasing to the House of Representatives, the House passed a resolution reversing his decision.[35] Believing this resolution not to be new legislation, but rather merely oversight of existing law, the House did not present the resolution to the President.[36]

These were the facts which led the Supreme Court to find the legislative veto to be unconstitutional in *Immigration & Naturalization Service v. Chadha.*[37] Writing for the Court, former Chief Justice Burger defined legislative action broadly to include all actions with the "purpose and effect of altering the legal rights, duties and relations of persons, including [executive branch officials] . . . outside the legislative branch."[38] Thus, the legislative veto's interference with the powers of the executive was twofold in *Chadha:* first, the legislative reversal of the Attorney General's decision,[39] and, second, the failure of Congress to comply with the presentment clause of the Constitution[40] by presenting the legislation containing that same reversal to the President for his consideration.[41] In addition, the legislative veto was not only an encroachment upon executive authority, but also a disregard for legislative procedure insofar as it violated the bicameral requirements of the Constitution[42] by which both houses of Congress must pass a bill before it can become law.[43]

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[32] *Id.* at 708.

[33] *Id.* at 711-12.

[34] Immigration and Nationality Act § 244(a)(1), 8 U.S.C. § 1254(a) (1982).

[35] Immigration & Naturalization Serv. v. Chadha, 462 U.S. 919, 926 (1983).

[36] *Id.* at 927-28.

[37] *Id.* at 919.

[38] *Id.* at 952.

[39] *Id.*

[40] The Constitution of the United States provides: "[E]very Bill which shall have passed

Conflict also results between the executive and legislative branches when the executive declines to enforce what it believes to be an unconstitutional statute. Former Attorney General William French Smith has pressed this point in two contexts: first, where the law at issue encroaches upon executive authority and, second, where clear precedent suggests the invalidity of the law. One may wonder why a President would sign legislation he thought was unconstitutional. The reason becomes apparent once the modern congressional practice of inserting substantive legislation in appropriations measures is understood. In effect, the President is given a choice between approving constitutionally suspect legislation buried in an appropriation or vetoing the measure and shutting the government down. The problem is further aggravated by the legislative practice of passing funding measures in the waning hours of a fiscal year, and sometimes even later. Since 1980, the government has, in fact, been shut down several times for lack of funds. The separation of powers are surely implicated by a practice that effectively negates the President's veto authority.

Because of the increasing impracticality of a veto, presidents have placed renewed emphasis upon presidential signing statements to articulate their constitutional concerns.[44] Such statements have a long history, but they are now more readily employed to direct subordinate executive officers to interpret newly enacted laws in rather specific ways to avoid unconstitutional implementation. In a sense, such statements are analogous to the executive stating directions in rulemaking or adopting a statutory interpretation in litigation. Nevertheless, members of Congress and other commentators, suspicious that the President will deliberately misinterpret the law to suit executive purposes, have objected to such statements as a usurpation of the legislative function. For example, the counsel to the House of Representatives argues that once a bill is on the President's desk "his role is limited to

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the House of Representatives and the Senate, shall, before it becomes a Law, be presented to the President of the United States." U.S. CONST. art. I, § 7, cl. 2.

[41] *Chadha*, 462 U.S. at 946.

[42] The Constitution of the United States provides: "All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives." U.S. CONST. art. I, § 1.

[43] *Chadha*, 462 U.S. at 945-46.

[44] Kmiec, *Judges Should Pay Attention to Statements By President*, NAT'L L.J., Nov. 10, 1986, at 13.

thumbs up or thumbs down, with no shades of gray [in between]."[45] However, an appreciation of the separation of powers demonstrates the inflexibility of such a broadly stated objection. The President has the executive responsibility to "take care that the [l]aws be faithfully executed."[46] This in itself commands a faithful and reasonable effort to make sure subordinates understand the law and enforce it. By the same token, any attempt by a President to supply additional terms or adopt an interpretation that would do violence to the terms provided by the Legislature would be unwarranted and antagonistic to legislative powers.

The President used a signing statement to highlight the separation of powers difficulty in the Balanced Budget and Emergency Deficit Control Act of 1985,[47] more commonly known as Gramm-Rudman. The Act specified declining deficit targets for each fiscal year through 1991.[48] In any year in which the deficit target was expected to be exceeded, the Comptroller General, a legislative officer removable only by Congress, was authorized to specify spending cuts to be made and to direct the President to make them, unless Congress legislated other reductions which obviated the need for the cuts.[49] In signing the law, the President stated: "I am mindful of the serious constitutional questions raised. . . . The bill assigns a significant role to [a legislative officer]. . . . Under the system of separated powers established by the Constitution, however, executive functions may only be performed by officers in the executive branch."[50]

The President was quite right to raise the objection since a few months later in *Bowsher v. Synar*[51] the Supreme Court invalidated the law on precisely the basis stated by the President. According to the court:

> To permit an officer controlled by Congress to execute the laws would be, in essence, to permit a congressional veto. Congress could simply remove, or threaten to remove, an officer for executing the laws in any fashion found to be unsatisfactory to Congress. This kind of congressional control over the execution of the laws . . . is constitutionally impermissible.[52]

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[45] Greenhouse, *Washington Talk: The White House; Signing Bills, Reagan Tries to Write History*, The N.Y. Times, Dec. 9, 1986, at B14, col. 3 (quoting Steven R. Ross, Counsel to the House of Representatives).

[46] U.S. CONST. art. II, § 3.

[47] Pub. L. No. 99-177, 99 Stat. 1038 (codified in scattered sections of 2, 31 and 42 U.S.C.) (Supp. III 1985)).

[48] *Id.* (codified at 2 U.S.C. § 622 (Supp. III 1985)).

[49] *Id.* (codified at 2 U.S.C. § 901 (Supp. III 1985)).

[50] President Reagan's Statement on Signing H.J. Res. 372 Into Law, 21 WEEKLY COMP. PRES. DOC. 1491 (Dec. 12, 1985).

[51] 106 S. Ct. 3181, 3194 (1986).

[52] *Id.* at 3189.

The Court's decision in *Bowsher* invalidating the balanced budget legislation on separation of powers grounds raises the question of what role the judiciary should play constitutionally in settling disputes between the executive and legislative branches. Because of the fluid nature of the concept, such disputes are, as a practical matter, often best left to the political arena. Indeed, the Court's political question doctrine, though never clearly applied in a separation of powers case, seems appropros. That doctrine asks whether the dispute has been committed by the Constitution to a branch other than the court, whether the lack of definable judicial standards precludes judicial action, and whether the controversial nature of the dispute counsels prudential noninvolvement.[53]

These questions are not easily answered, however, because several Supreme Court decisions have shunted the political question doctrine aside in order to reach questions that were previously thought committed elsewhere under the Constitution: namely, legislative apportionment[54] and the seating of a member of Congress whose qualifications were in doubt.[55] Moreover, noted scholar Herbert Wechsler has severely criticized the political question doctrine as antagonistic to the Court's primary function, which is, in the words of John Marshall, "to say what the law is."[56] It should be noted, though, that Wechsler's criticism merely suggests that the Court should take the case in order to determine whether, in fact, the dispute has been constitutionally committed elsewhere.

Chief Justice Rehnquist has spoken strongly in favor of the political question doctrine.[57] Similarly, Professor Choper has urged that the Court should generally abstain where the political branches can fend for themselves.[58] In large part, this idea is also implicit in Justice White's dissent in the Gramm-Rudman case, which suggests that where a statute poses "no real danger of aggrandizement of congressional power" the Court should not interfere.[59] According to Justice White, "[t]he role of [the] Court should be limited to determining whether the Act so alters the balance of authority among the branches of government as to pose a genuine threat to the basic division between the lawmaking power and the power to execute the law."[60]

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[53] *See* Baker v. Carr, 369 U.S. 186, 208-37 (1962).

[54] *Id.* at 209.

[55] *See* Powell v. McCormack, 395 U.S. 486, 518-22 (1969).

[56] Marbury v. Madison, 5 U.S. (1 Cranch) 137, 177 (1803); *see also* Wechsler, *Toward Neutral Principles of Constitutional Law*, 73 Harv. L. Rev. 1 (1959).

[57] *See, e.g.*, Uhler v. AFL-CIO, 468 U.S. 1310, 1312 (1984); Maryland v. United States, 460 U.S. 1001, 1005-06 (1983) (Rehnquist, J., dissenting); Virginia Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748, 783-84 (1976) (Rehnquist, J., dissenting).

[58] *See* J. Choper, Judicial Review and the National Political Process *passim* (1980).

[59] Bowsher v. Synar, 106 S. Ct. 3181, 3211-14 (1986) (White, J., dissenting).

That cautionary note is appropriate. Nevertheless, it should not be taken to signify a tolerance for the blurring of power in a manner contrary to the structural features of the Constitution. In my judgment, the Court's decisions in *Chadha* and *Bowsher* were necessary reaffirmations of the principles which maintain the constitutional allocation of authority among coequal branches which we revere today. Having done that, the Court may, and perhaps should, prudentially refrain from resolving day-to-day interbranch disputes. Those entrusted with governmental power forget, at their peril and ours, that the first line of duty in fulfilling the terms of the Constitution rests with them, not with the courts. Each branch must strive to observe its functional limitations. Most importantly, when encroachments of power occur, the affected branch must seek rectification in a manner which does not paralyze the governmental process. To do otherwise would lose sight of the fact that the framers sought not only the preservation of liberty, but liberty's preservation within the confines of a workable government.

Mr. KMIEC. I think primarily, Senator, my view is that a signing statement issued by the President should be a direction not to the courts, but to the subordinate executive officers in the executive branch.

As we all know, the Senate and the House, in passing laws, suffer from the same infirmity that all of us do when we use language, and that is there are frequently terms that, as precise as we would like to have them, are nevertheless somewhat imprecise when one is tasked with implementation. I think the President clearly does have an obligation to ascertain the meaning of a statute from its terms and from its legislative history and, based upon that examination, when he feels it appropriate, to give direction to his subordinate executive officers so that they are faithfully executing the law, notwithstanding the vagaries of language.

Primarily, sir, I think the signing statement is not of use in a court of law, but is of use within the executive branch as a matter of administration. There are a handful of cases where the Supreme Court has alluded to signing statements, and those are cases where there is an issue of what the Executive's interpretation of the law was, and in those cases, I think a court would find it to be an appropriate source of information to discern the Executive's interpretation.

Senator KENNEDY. Well, you do not see that this guidance or this clarification for subordinates to be inconsistent with the congressional intent, do you?

Mr. KMIEC. No, clearly it cannot be. To the extent that a signing statement would be used to thwart the express terms of the statute or was not giving due consideration to the legislative history that gave rise to the words of the statute, it would not be a proper use of that statement.

Senator KENNEDY. Well, I think that is certainly helpful in clarifying. I think basically that when the Congress passes the laws, it intends to mean what it says. And the President obviously, if he has a differing view, has the opportunity to veto it and send it back for reconsideration; but if he does not, then the congressional intention would be the guiding force in terms of interpretation.

Mr. KMIEC. I do not disagree, Senator.

Senator KENNEDY. All right.

We want to thank you. We do not always have nomination hearings that run quite this smoothly, at least that I have been involved with.

We want to thank you very much. As I mentioned, you have a very impressive record in areas that we have reviewed with our colleagues here, you are highly recommended and I am sure your nomination will be favorably considered, and hopefully as early as possible.

Mr. KMIEC. Thank you.

Senator KENNEDY. Thank you very much.

[Response to written questions follows:]

U.S. Department of Justice

Office of Legal Counsel

Office of the
Assistant Attorney General

Washington, D.C. 20530

SEP 9 1988

Senator Strom Thurmond
United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Dear Senator Thurmond:

I am pleased to enclose my answers to the written questions which were submitted to me on your behalf at the hearing held on September 8, 1988 pertaining to my nomination to the position of Assistant Attorney General, Office of Legal Counsel. I have tried to answer the questions as forthrightly and completely as possible, and I am willing to further amplify my responses should you find that appropriate.

I appreciate your sincere interest in and consideration of my nomination.

Respectfully,

Douglas W. Kmiec
Acting Assistant Attorney General
Office of Legal Counsel

Enclosure

Answers to the Questions of Senator Thurmond
Pertaining to the Nomination of Douglas W. Kmiec of Indiana for
Assistant Attorney General, Office of Legal Counsel

1. MR. KMIEC, A LARGE PORTION OF YOUR CAREER HAS BEEN SPENT AS A PROFESSOR OF LAW. NOW YOU HAVE BEEN NOMINATED TO BE ASSISTANT ATTORNEY GENERAL FOR THE OFFICE OF LEGAL COUNSEL. WHAT, IN YOUR OPINION, WILL BE THE MOST REWARDING ASPECT OF SERVING IN THIS CAPACITY?

I believe my background as a professor of constitutional law is excellent preparation for the work of the Office of Legal Counsel. From the standpoint of career development, the most rewarding aspect of my service in this Office has been, and will continue to be, the opportunity to apply my university background to some of the most difficult and complex constitutional and statutory questions facing our nation. In addition, the Office of Legal Counsel is a small, collegial office made up of some of the finest career and appointed lawyers in government service. It is a true honor to work side-by-side with these professional men and women.

2. MR. KMIEC, WOULD YOU TELL THE COMMITTEE WHAT YOUR DUTIES WILL BE UNDER THE ATTORNEY GENERAL, AND HAVE YOU IN FACT DISCUSSED THEM WITH ATTORNEY GENERAL THORNBURGH?

The Office of Legal Counsel serves as, in effect, the "general counsel" to the executive branch. In that capacity, we supply written and oral advice to each of the executive agencies, the White House, and the Department of Justice, itself. We have been delegated the important responsibility of drafting the opinions of the Attorney General as well as rendering legal advice directly. The questions we consider can relate to any aspect of the Constitution or the U.S.Code. In addition, by executive order and delegation of the Attorney General, the Office resolves legal disputes among executive branch agencies. The Office reviews presidential executive orders for form and legality and pending legislation for constitutional or other legal problems.

I have had occasion to discuss these functions with Attorney General Thornburgh, and he has indicated his full confidence in the manner in which we are carrying out our responsibilities.

3. MR. KMIEC, ONE OF THE RESPONSIBILITIES OF THE OFFICE OF LEGAL COUNSEL IS TO PROVIDE LEGAL ADVICE FOR THE ATTORNEY GENERAL. IN EFFECT YOU WILL SERVE AS THE ATTORNEY GENERAL'S LAWYER. IF AN OCCASION SHOULD ARISE WHEN YOUR BEST LEGAL ADVICE CONFLICTED WITH A POLICY WHICH YOU KNEW THE ATTORNEY GENERAL WISHED TO PURSUE, WHAT ACTIONS WOULD YOU TAKE TO ATTEMPT TO RESOLVE THE CONFLICT?

It has long been the policy of the Office of Legal Counsel to provide candid, objective and accurate legal advice. Of necessity, that requires that we occasionally advise the Attorney General or others that a particular policy course cannot be legally pursued. To strengthen our ability to give the proper legal answer even in difficult circumstances, it is my view that this Office should generally refrain from commenting on the policy merits of issues presented. Thus, when we state our objections, they are clearly understood as matters of law, not policy preference. I know that Attorney General Thornburgh conceives of our function in this manner. Therefore, provided our research was sufficiently thorough and sound to withstand rigorous examination, I fully expect that the Attorney General would accede to our advice. Like any good legal advisor, of course, we would assist the Attorney General in exploring alternative courses which would meet legal requirements. We would not adopt, however, a strained interpretation of the law to accommodate a policy.

Senator KENNEDY. Mr. Boyd, would you please come forward?

TESTIMONY OF THOMAS M. BOYD, OF VIRGINIA, TO BE ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGISLATIVE AFFAIRS, U.S. DEPARTMENT OF JUSTICE

Senator KENNEDY. Mr. Boyd, would you be good enough to introduce your family?

Mr. BOYD. Thank you, Mr. Chairman.

On my left—and I do this at the risk of there being another pattern—my wife's name is Carol as well.

Senator KENNEDY. It looks like it is a changing situation over there. [Laughter.]

Mr. BOYD. It is not clear, actually, the order of family, but sitting on my wife's left is our 5-year-old son Tyler, who from time to time is confused as to whether he wants to grow up to participate in a construction company or a demolition company. Behind him, in fact, is our neighbor, Joanna Dempsey, who is here as the enforcer in the event he likes to show the committee that he has yet another calling, that of a talk-show host. [Laughter.]

My 10-year old daughter Brooke, who swims and writes fiction with equal grace and energy. I thank you for the opportunity to introduce them.

Senator KENNEDY. That is fine.

Would you be good enough to stand, please: Do you swear that the testimony you give will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. BOYD. I do.

Senator KENNEDY. I would tell both of our nominees that this is one of the few hearings that we have had that we have not had the good counsel of one of our Republican colleagues. I do not know what the significance of that is, but it might be interpreted as being remarkably smooth-sailing for both of the nominees.

There is a quiet voice to the rear that said "Maybe we can trust you on these two." [Laughter.]

The position of the Assistant Attorney General in charge of the Office of Legislative Affairs is tantamount to being the Justice Department's ambassador to Congress, and to State and local governments. It is an important position, and, Mr. Boyd, you are to be congratulated for your nomination. You have worked in the Department for several years, and served for 10 years on the staff of the House Judiciary Committee. You have had an opportunity to view the relationship between the Department and Congress from both sides.

Would you tell us briefly, please, what you understand to be the proper function of the Assistant Attorney General in charge of the Office of Legislative Affairs?

Mr. BOYD. Mr. Chairman, as an alumnus, of course, of the other side of Capitol Hill and having worked at both ends of Pennsylvania Avenue, I think I have an appreciation, as you know, for the need which the Congress has to look for information pursuant to its legislative responsibilities under article I, and I think I also have a responsibility to effectively represent the President and the Attorney General before this body.

I know from my experience across the way that you do not do that very effectively unless you can act with a degree of integrity and professionalism, and that has a great deal to do with what kind of representation one can make when you are working up here.

I would hope that one of the major functions of this position will be to provide an accurate, sympathetic, and articulate representation of the views of the administration and to attempt to reach the mutuality of thought which exists at both ends of the street on most issues, and in those instances where we do disagree, to honorably and professionally state our disagreements and work toward a common end.

Senator KENNEDY. Very fine. One of the most important functions of the Office of Legislative Affairs is to handle the Department's responses to congressional requests for information and documents relating to the Department's work. If the Congress is to perform its constitutional responsibility, it is absolutely vital that it receive accurate and complete information regarding the manner in which the Department enforces the laws.

As you know, back in March of 1987, the Senate Judiciary Committee requested documents from the Department relating to the Civil Rights Division's investigation of the so-called ballot integrity program in Louisiana in 1986, a systematic attempt to disenfranchise black voters. In December of 1987, after considerable resistance from the Department, the Division finally produced some responsive documents. However, at an oversight hearing in May of 1988, Assistant Attorney General William Bradford Reynolds referred to other documents that were clearly relevant to the committee's request. Shortly thereafter, Senator Metzenbaum wrote to Mr. Reynolds asking the Civil Rights Division to produce other related documents so that the committee could evaluate the Civil Rights Division's performance or lack of performance of its responsibility to enforce the Voting Rights Act in connection with the ballot integrity program.

On June 24, 1988, you responded to Senator Metzenbaum's letter. Your letter indicates the Department's position that the request originally formulated required an extensive document search, and then your letter goes on, in language that I can only characterize as unfortunate, to question the committee's authority to seek the documents at issue.

The letter states:

> We would ask that the committee assist us in better understanding the legislative purpose for the committee's interest in this matter. The law seems to be fairly well established in this area and not in need of amendment. While the Senator has expressed an apparent disagreement with the Department's decision not to initiate a criminal investigation in the Louisiana matter, it does not readily appear that such differences on matters pertaining to the executive branch's exercise of prosecutorial discretion implicates any considerations to the committee's authorization and appropriation responsibilities. We would therefore be interested in the committee's explanation of why it believes that this particular expenditure of time and resources might be needed.

[Letter follows:]

U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 24, 1988

Honorable Joseph R. Biden, Jr.
Chairman, Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

In a June 7, 1988, letter to Mr. William Bradford Reynolds, Assistant Attorney General for Civil Rights, Senator Metzenbaum requested documentation from the Department relating to the ballot integrity program in 1986 in Louisiana or any similar programs in any other area of the country. This issue was raised in a hearing chaired by Senator Paul Simon on May 26, 1988.

As to Louisiana, a similar request was made by the Committee and materials were furnished on December 11, 1987. While we believe that this earlier document production included most, if not all, of the documents currently reached by the Senator's most recent request, we are undertaking a further file search and will certainly notify the Committee promptly if and when any additional materials are located.

As to the remaining portion of the Senator's document request, the Committee should be aware that various types of voter verification procedures are frequently utilized in most states. Indeed, it is generally regarded as sound policy to review periodically the voting rolls at the state and local levels and remove the names of voters who have deceased or moved away and many states have such procedures written into their laws.

Accordingly, when any covered jurisdiction adopts or modifies a procedure relating to purges, re-identification or re-registration, it must be submitted for preclearance under Section 5 of the Voting Rights Act. We have processed almost 1200 such submissions since the passage of the Act. While we have entered objections in those few instances where the jurisdiction was unable to demonstrate that its proposal was free of discriminatory purpose or retrogressive impact on minority voting rights, even in those instances the Department did not conclude that the circumstances warranted criminal investigation.

We infer from the content of the Senator's request that he did not intend for us to initiate the massive document search and production that would be required to respond for all such determinations, but rather had reference only to those made in 1986. It would be helpful if we could have some further guidance on this point.

In addition, we would ask that the Committee assist us in better understanding the legislative purpose for the Committee's interest in this matter. The law seems to be fairly well established in this area and not in need of amendment. While the Senator has expressed an apparent disagreement with the Department's decision not to initiate a criminal investigation into the Louisiana matter, [it does not readily appear that such differences on matters pertaining to the Executive Branch's exercise of prosecutorial discretion implicates any considerations pertinent to the Committee's authorization and appropriation responsibilities.] We would therefore be interested in the Committee's explanation of why it believes that this particular expenditure of time and resources might be needed.

Sincerely,

Tom Boyd

Thomas M. Boyd
Acting Assistant Attorney General

cc: Honorable Strom Thurmond
Honorable Paul Simon
Honorable Howard M. Metzenbaum

Senator **Kennedy**. Now, I found that statement troubling, because it seems to imply that the Congress could only request documents from the Department when the request was pertinent to a piece of pending or imminent legislation.

In an August 16, 1988 letter to Senator Metzenbaum, you deny that that was your intention.

[Letter follows:]

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

August 16, 1988

Honorable Howard M. Metzenbaum
United States Senate
Washington, D.C. 20510

Dear Senator Metzenbaum:

It has been brought to my attention that some Members of the Committee may view the closing paragraph of my June 24, 1988, letter to you as offensive, both in tone and content. If so, I would like to take this opportunity to convey to you and to them my sincere regrets. My letter has been misinterpreted to imply that I do not believe that Congress has a right to seek information from the Executive Branch without a bill in place. This understanding is incorrect. On the contrary, Congress enjoys oversight authority over this Department and, in order to fulfill that function, is frequently in need of information. To the extent possible, consistent with our obligations under the law, I believe we should always strive to cooperate.

As you may know, following my departure from the Department of Justice in 1976, I spent ten years on the staff of the House Judiciary Committee. I believe that Peter W. Rodino, Jr., Chairman of the House Judiciary Committee, and Hamilton Fish, Jr., the Ranking Republican Member of that Committee, both of whom have generously offered to appear before the Senate Judiciary Committee on my behalf, will be able to attest to my abiding respect for the legislative process.

I would be pleased to discuss this matter with you further at your convenience.

Sincerely,

Tom

Thomas M. Boyd
Acting Assistant Attorney General

cc: Honorable Edward M. Kennedy
Honorable Strom Thurmond

Senator **Kennedy**. I would ask you today what is your view of the scope of this committee's authority to obtain documents from the Department?

Mr. **Boyd**. Well, Mr. Chairman, I can say simply, in summary, as to the paragraph that you quoted, that it was a bad choice of words on my part, that my letter of the 16th I think accurately reflects my view.

As I indicated, I think, in my response to your first question, the responsibilities of the Congress are broad and wide-ranging. I know from my own experience up here that you cannot conduct the business of the legislative branch very effectively without a significant amount of information. And as the Attorney General noted during his confirmation hearing of the 11th of August, our intention, his intention as well as mine—and we discussed this matter in depth—is to be as cooperative as we can possibly be with respect to responding to congressional requests for information.

There are inevitably going to be certain areas of tension, and when we have those areas of disagreement, as I indicated earlier, part of my job and part of my responsibility is to try to eliminate the disagreements and work in a way in which we can resolve the needs of both ends of the street. That is my view.

I think you have wide-ranging oversight authority. I do not think a bill has to be introduced. I do not think that the legislative purpose has to be as immediate as I might have implied through the letter which you have quoted, and I would work with you and with the committee to provide whatever information we can, as quickly and as efficiently as we can.

Senator **Kennedy**. Well, that is a very constructive and positive response. As I understand it, you give broad latitude to the needs of the committee in terms of fulfilling its oversight responsibilities of the Department.

Mr. **Boyd**. That is correct, Senator.

Senator **Kennedy**. And not limited necessarily just to a piece of pending legislation.

Mr. **Boyd**. That is correct.

Senator **Kennedy**. Let me ask you if you agree with this description of Congress' investigative power, which is taken from the Supreme Court's 1957 decision in the *Watkins* case:

> The power of the Congress to conduct investigations is inherent in the legislative process. That power is broad. It encompasses inquiries concerning the administration of existing laws as well as proposed and possibly needed statutes. It includes surveys of defects in our social, economic or political system for the purpose of enabling the Congress to remedy them. It comprehends probes of departments of the Federal Government to expose corruption, inefficiency or waste. [*Watkins* v. *United States*, 354 U.S. 178, 187 (1957)].

Do you agree with the Supreme Court that the Congress' oversight authority—and its authority to request documents from the Justice Department—extends to administration of existing laws, and not just to proposed legislation?

Mr. **Boyd**. Absolutely.

Senator **Kennedy**. Obviously, we all agree that Congress should not go on a fishing expedition, and procedures exist for asserting executive privilege. They are not really at issue here.

I want to congratulate you. Thank you very much. We will turn the hearing over to Senator Grassley. I knew you would be keeping your eye on what we are up to here.

Senator GRASSLEY. I am sure there is no need for it.

Senator KENNEDY. I want to express my personal congratulations to both you nominees. Senator Grassley is here. I welcome the opportunity to vote affirmatively and I will urge the committee to move expeditiously to consideration and also urge the leader to move expeditiously.

Mr. BOYD. Mr. Chairman, may I make one comment, if I may?

Senator KENNEDY. Surely.

Mr. BOYD. I would like to extend my own appreciation to you and your staff and the other members of the committee for scheduling this hearing. I know you have now entertained six new officials from the Department of Justice over the past several months, and the Attorney General wants me to extend to you his appreciation for giving us this opportunity of more accurately, giving him, the opportunity to have a full team on board, and I appreciate it as well.

Senator KENNEDY. Very good. That is my position. I am very hopeful we can have the whole team in place.

I recognize Senator Grassley.

Senator GRASSLEY. Mr. Chairman, I thank you very much. When I am finished, I will adjourn the meeting.

Senator KENNEDY. Yes.

Senator GRASSLEY [presiding]. I do not want to detract from this very positive atmosphere, because I do not oppose your confirmation. I very much support it and I want you to know that I will be voting for it as well. But I do want to take advantage of this opportunity to discuss with you a recent decision of the Department that bothers me and, for the sake of hearing the official position, I want to discuss the government's recent decision not to appeal the case involving the Anti-Terrorism Act of 1987 and the closing of the PLO Mission Office in New York that would have come as a result of that legislation.

From a congressional relations perspective—and that is the vein in which I ask this question—let me suggest to you that it is a serious matter when the executive branch will not see to it that the laws passed by Congress are faithfully executed. So my question is, in the first place, what role did the Justice Department have in that decision that was made just last week? Who, if anybody, from the Department of Justice conferred with President Reagan on this matter, and when did those discussions take place?

Mr. BOYD. Well, Senator, as you know, the Attorney General is, among other things, the attorney to the President and he, along with other members of the President's Cabinet, contributed his views on this matter, and I believe spoke with you on the telephone about it.

Senator GRASSLEY. Yes.

Mr. BOYD. I was not privy to that conversation. In fact, I was not even in Washington when it took place, but——

Senator GRASSLEY. Well, it was a very satisfying discussion that I had with the Attorney General on the matter, I can say that.

Mr. Boyd. Well, I do not think anything has changed with respect to his views, and he communicated those to the President. The President, after consideration of the views of a number of members of his administration, decided to decline to pursue the appeal. The communications between the Department and the President in matters such as this, quite honestly, constitute lawyer-client communications and I do not think it would be appropriate for me to get into more detail. But there was a conversation which you had on generalized matters, and I cannot tell you any more with respect to who talked to whom and at what time. I was on vacation during that period. But I can tell you that we made every effort to try to notify your office and other offices simultaneous to the decision having been made, and it was released about the same time we learned about it.

Senator Grassley. Can you, without violating that relationship between your Department and the President, at least be able to tell us when the Department first became aware that the appeal would not be taken up?

Mr. Boyd. I do not have that information at this instance, but I will get it to you by noon tomorrow.

Senator Grassley. Okay. I want you to know that I ask this because I was assured from various officials within the Department, up to and including the Attorney General on the Friday before the announcement was made, that the appeal would be filed.

Now, if I had not known differently before the Monday announcement, we could have enlisted at that point the assistance of the Senate Counsel to intervene in the case and perhaps independently pursued the appeal, but the last-minute announcement contradicting all of the assurances given to me probably precludes the Senate from seeking any appeal at this time. So, if you will give me at least, as I try to piece things together, that information on the time, it would be an important factor.

Mr. Boyd. I would be happy to.

Senator Grassley. My fundamental concern about this decision not to appeal is that it undercuts the role of Congress. It is the job of the executive branch to enforce the laws that Congress makes. By not appealing this court decision, which rested on a mistaken reading of congressional intent, the executive branch has in effect said that it would enforce only the laws which it agrees with.

Needless to say, I am troubled at the possibility of the executive branch picking and choosing among the laws that it will enforce. Can you give me your assurance that you will work with the Congress to see that, where problems of enforcement appear, Congress will be so advised?

Mr. Boyd. Absolutely, Senator.

Senator Grassley. I wrote a letter on August 30 to your boss, the Attorney General, to meet to discuss the handling of the PLO appeal. As of yet, we have had no response from the Attorney General. So, I would like to ask you, are you aware of the letter, and is the Attorney General planning to meet with us?

Mr. Boyd. I am aware of the letter. I do not know the Attorney General's schedule, but I will get you an answer on that as well, Senator, by noon tomorrow.

Senator Grassley. Okay.

Mr. **Boyd**. If that will be satisfactory.

Senator **Grassley**. Thank you very much.

We have a prepared statement from Senator Hatch in support of both of these nominations. He was unable to be present, and without objection, the statement will be included as part of the record.

[The statement of Senator Hatch follows:]

PREPARED STATEMENT OF SENATOR ORRIN G. HATCH

Thank you, Mr. Chairman, for holding these confirmation hearings this afternoon. The Assistant Attorneys General for the Offices of Legal Counsel and of Legislative Affairs serve the needs of this body as well as those of their Department and of our fellow citizens. Filling these vacancies promptly is critical to the effective operation of the Department of Justice.

I am pleased to report that the nominees before us possess the experience and temperament necessary to serve successfully. Mr. Kmiec has served for two months as the *Acting* Assistant Attorney General for the Office of Legal Counsel, prior to which he served as the *Deputy* Assistant for the same office. The recipient of numerous professional honors and awards, he has taught at three law schools and is presently on leave from the University of Notre Dame, where he founded the *Journal of Law, Ethics and Public Policy*. An author of legal textbooks and numerous scholarly articles, he brings not only impressive intellectual credentials but also impeccable ethics to this position. Moreover, I note that Mr. Kmiec has a distinguished record of participation in pro bono publico activities.

Mr. Boyd has served as the acting head of his office with distinction. For six months he has been the Acting Assistant Attorney General for the Office of Legislative Affairs, prior to which he served as a Deputy in the same office. That assignment followed a ten-year period of indefatigable service for the House Judiciary Committee. He, too, has published articles which indicate his preparation for this challenging assignment.

Mr. Chairman, I join in welcoming these distinguished nominees here this morning.

Senator **Grassley**. Senator Thurmond has some questions to submit for the record, so without objection, those questions will be submitted and we will ask for an immediate response to those questions for the record.

[The questions and answers referred to follow:]

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

September 29, 1988

Honorable Patrick Leahy
United States Senate
Committee on the Judiciary
Washington, D.C. 20510-6275

Dear Senator Leahy:

Thank you for your letter, dated September 23, 1988, in which you express concern about the relationship between the Office of Legislative Affairs and the Judiciary Committee of the Senate. Your questions seem to focus on the extent to which this Office speaks to the Congress on behalf of the Department. In particular, you referred to two letters, dated July 21, 1988 and September 2, 1988 in which a request made by you to the Office of Legal Policy was responded to by this Office. Additionally, you asked about the extent to which this Office may respond on behalf of the FBI on S. 2361, the Video and Library Privacy Protection Act. If I may, I would like to attempt to respond to each of your inquiries in the order in which they were presented.

1. **What is your view of the appropriate role of the Office of Legislative Affairs when a request is directed to a particular Assistant Attorney General, who has been asked to testify or has testified at an oversight hearing?**

Attorney General Dick Thornburgh has indicated that the Office of Legislative Affairs should speak for the Department and for him on legislative matters. Accordingly, all Congressional correspondence, including requests from the Senate and House Judiciary Committees, whether addressed to the Attorney General or to other officials within the Department, will, in most instances, be handled by this Office. Where questions are addressed to witnesses as a consequence of their testimony, I think it is entirely appropriate for the witness, following coordination with this Office, to respond personally.

2. **Is it appropriate for an Acting Assistant Attorney General for the Office of Legislative to respond in place of the Assistant Attorney General who testified at the hearing?**

As indicated above, it is the view of the Attorney General that this Office will respond to all legislative inquiries which are directed to the Department or any officials of the Department. If follow-up questions are directed by a Committee to a Departmental witness, then it is entirely appropriate for that witness to respond.

3. **If so, do you intend to comply with the request? When will the complete answers be submitted?**

The Department wishes to comply to the fullest extent possible to any Congressional request, including yours for statistical information concerning the Freedom of Information Act (FOIA). However, the Office of Legal Policy, which has responsibility over FOIA matters, has indicated that the Department does not maintain the kinds of data sought through the questionnaire you submitted and has no ready means of gathering it.

We are more than willing, however, to sit down with you or your staff, and we have arranged to do so today, to work out a mutually acceptable accommodation. We hope that some alternative could be found which would provide you and the Subcommittee with information which would be useful to you. For example, we would be willing to consider the use of a sampling method as the Department of Health and Human Services has done, in which only a small percentage of all requests of some category of records were reviewed.

4. **In future matters, under what circumstances will the Office of Legislative Affairs respond to requests from oversight committees directed to particular Justice Department officials?**

Once again, it is the Attorney General's view that the Office of Legislative Affairs should respond on behalf of the Department to requests made by the Senate and the House Judiciary Committees. Exceptions will be made on a case by case basis, with follow-up questions to witnesses an example of such a exception.

5. **What is the basis for the Assistant Attorney General for the Office of Legislative Affairs commenting in place of the Director of the FBI?**

In the instance to which you refer, a decision was made that the Department should respond on S. 2362 and that our response should represent a Departmental/Administration view. It is for that reason that this Office forwarded a response to the Committee.

6. In future matters, should members of the oversight committee expect the Office of Legislative Affairs to respond to inquiries to the FBI?

Because of the unique law enforcement and national security functions of the FBI, Director Sessions often directly responds, on behalf of the Bureau, to inquiries from Members of Congress, but only after coordination with this office. Where issues of general policy are involved, particularly those involving Departmental comments on pending or proposed legislation, this Office will respond.

I hope these responses clarify any confusion which might have arisen. This Office and the Department at large wish to work as cooperatively as possible with you and other Members and staff to respond to your concerns. If you have any questions, I hope you will notify me at your earliest possible convenience. I should add that the views expressed in this letter have been reviewed by the Attorney General, and they reflect his position on both policy and procedure.

Sincerely,

Tom

Thomas M. Boyd
Acting Assistant Attorney General

cc: Senator Joseph R. Biden, Jr.
Senator Strom Thurmond

Senator **Grassley**. Thank you very much.

We will now adjourn the committee, as Senator Kennedy asked me to.

Thank you.

[Whereupon, at 4:05 p.m., the committee was adjourned.]

I. Biographical Information (Public)

1. **Full Name** (include any former names used.)

Douglas William Kmiec

2. **Address: List current place of residence and office address(es).**

My home address is:

52177 Fieldstone Lane,
Granger, Indiana 46530.

My local address is:

2622 Woodley Place
Falls Church, Virginia 22046

My office address is:

U. S. Department of Justice
Office of Legal Counsel
Room 5214
10th & Constitution Ave., N.W.
Washington, D.C. 20530

3. **Date and Place of Birth:**

September 24, 1951; Chicago

4. **Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).**

Married; Wife's maiden name: Keenan. My wife is the mother of our three children, a homemaker, and an occasional student at both Notre Dame and Indiana University. She does enormous amounts of volunteer and charitable work for our local parish school and our neighbors generally.

5. **Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.**

University of Southern California Law Center, 1973-76, Juris Doctor granted June 1976;

Exeter University (Exeter, England) (College of William & Mary Summer Law Program), Summer 1974;

Northwestern University, 1970-73, Bachelor of Arts granted May 1973;

Northern Illinois University, 1969-70.

6. **Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.**

1975: Summer Associate
Pacht, Ross, Warne, Bernhard & Sears, 1800 Avenue of the Stars, Los Angeles, California

1976-78: Associate Attorney
Vedder, Price, Kaufman & Kammholz, 115 South La Salle Street, Chicago, Illinois

1978-80: Assistant Professor of Law
Valparaiso University Law School
Valparaiso, Indiana 46383

1980: Adjunct Professor of Law
Indiana University Northwest
Graduate Department of Environmental Affairs
Gary, Indiana

Summer 1980: Associate Attorney
Fulop, Rolston, Burns & McKittrick
MacArthur Boulevard
Newport Beach, California

1980 - present: Professor of Law, (with tenure since 1983)
Director of Center on Law & Government, (1983-88)
The Law School
University of Notre Dame
Notre Dame, Indiana 46556

1982-83: White House Fellow;
Special Assistant to the Secretary
U.S. Department of Housing & Urban Development
Washington, D.C. (on leave from University of Notre Dame).

1986-87: Deputy Assistant Attorney General
1988 - present: Acting Assistant Attorney General
Office of Legal Counsel,
U.S. Department of Justice
Washington, D.C. 20530 (on leave from University of Notre Dame)

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

Not Applicable

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Professional: White House Fellowship, 1982-83

40th Anniversary Distinguished Fulbright Fellowship, 1987

Distinguished Service Award, 1983
U.S. Department of Housing & Urban Development

Distinguished Service Award, 1987
U.S. Department of Justice

Twice Designated (1983 & 1987) by the Faculty Editors and Reviewers of the Land Use and Environmental Law Review as the author of some of the most outstanding legal scholarship in the land use and environmental areas.

Honored for voluntary community service as a member of the Board of the South Bend Housing Allowance Office

Nominated as a Rev. Theodore M. Hesburgh, C.S.C. Lecturer

Who's Who in American Law

Educational: Legion Lex Commencement Prize for Legal Writing, 1976, USC Law Center

Member & Senior Staff, Southern California Law Review, 1974-76.

Phi Delta Phi Honorary Initiate, 1983

Graduated with Departmental Honors in Political Science, Northwestern University

Selected for and participated in University Honors Program, Northern Illinois University

9. **Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.**

Member, Illinois Bar, since 1976.

Member, California Bar, since 1980.

Former Member, Chicago Bar Association, 1976-78.

Elected, Vice-Chair, Section on Local Government, Association of American Law Schools, 1988

Appointed Chairman, American Bar Association Task Force on Professors of Urban Law (resigned from task force upon entry into government service)

10. **Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.**

I do not believe that I am a member of any organization which actively lobbies before public bodies. Other organizations to which I belong are:

Christ the King Parish, South Bend, Indiana
St. James Parish, Falls Church, Virginia
Association of American Law Schools
University Club, University of Notre Dame
White House Fellows Alumni Association
University of Southern California Law Alumni Association

11. **Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.**

Member, U.S. Supreme Court Bar, since 1986.

Member, U.S. Court of Appeals for the D.C. Circuit, since 1987.

Member, U.S. Federal District Court for the Northern District of Illinois, since 1976.

12. **Published Writing: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.**

The following books and articles have been published by me and are generally available in law libraries:

Zoning and Planning Deskbook, Clark Boardman 750 pp (1986) (supplemented 1987, 1988).

Recharting Criminal Procedure -- The Supreme Court's 1983-84 Term, (with Dutile), Harcourt, Brace, Jovanovich 232 pp (1984).

"Of Balkanized Empires and Cooperative Allies--A Bicentennial Essay on the Separation of Powers," 37 Cath. U. L. Rev. 73 (1987).

"The Contract Clause: A Return to the Original Understanding," (with McGinnis) 14 Hastings Constitutional Law Quarterly 525 (1987).

"Exclusionary Zoning and Purposeful Racial Segregation in Housing: Two Wrongs Deserving Separate Remedies" 18 Urban Lawyer 393 (1986).

Reprinted as Outstanding Article: Land Use and Environmental Law Review (1987).

"Protecting Vital and Pressing Governmental Interests--A Proposal for a New Zoning Enabling Act," 30 Journal of Urban and Contemporary Law 19 (1986).

"Judges Should Pay Attention To Statements By Presidents," National Law Journal 13 (Nov. 10, 1986).

"Of Focal Meanings and Compensating Juries--New Property Erodes New Liberty," 1 Notre Dame Journal of Law, Ethics & Public Policy 829 (1985).

"The Wrong Solution," ABA Journal (Dec. 1, 1986).

"Implementing The Recommendations of the President's Commission on Housing--A Proposal for a New Zoning Enabling Act" 9 Zoning and Planning Law Report 1 (1986).

Reprinted: 1986 Zoning and Planning Law Handbook (Gailey ed., 1986).

"New Federalism Is Not Enough: The Privatization of Nonpublic Goods," (with Diamond), 7 Harvard J. of Law & Pub. Pol. 321 (1984).

"Why a Journal of Law, Ethics and Public Policy?" 1 Notre Dame Journal of Law, Ethics & Public Policy 1 (1984).

"Deregulating Land Use: An Alternative Free Enterprise Development System," 130 U. Pa. L. Rev. 28-130 (1981).

Reprinted as Outstanding Article: Land Use and Environmental Law Review (1983).

"Regulatory Takings: The Supreme Court Runs Out of Gas in San Diego," 57 Ind. L. J. 45-81 (1982).

"Shared Appreciation Mortgages: A Step Toward Making Housing a Bad Investment," 10 Real Estate L. J. 302-336 (1982).

"Reprinted: National Truth-In-Lending Manual (5th Ed. 1983); ABA Personal Finance Quarterly (1982).

"Environmental Inequities," 57 Notre Dame L. Rev. 313-339 (1982).

"Constitutional Remedies in Indiana," Chapter 15 of Indiana Real Estate Practice, 123 pp. (1982).

"Private Control of Collective Property Rights," 13 Val. U. L. Rev. 589-600 (1979).

"The Planner's Role in a Deregulated World," 34 Land Use & Zoning Digest 4 (1982).

"Justifying Land Use Deregulation," 5 Zoning and Planning Law Report 33 (1982).

"Reprinted: 1983 Zoning and Planning Law Handbook (Strom ed., 1983).

"Manufactured Home Siting: Statutory and Judicial Overview," 6 Zoning and Planning Law Report 105 (1983).

"Probate Reform: California's Declaration of Independent Administration," 50 S. Cal. L. Rev. 155-204 (1976).

While I have given a number of panel presentations or speeches on legal issues, because virtually all of these thoughts have been included in the more formal publications listed above, it has not been my practice to keep the copies or notes for such presentations.

13. **Health: What is the present state of your health? List the date of your last physical examination.**

My health is excellent and I had a physical examination several years ago in conjunction with inoculations for official foreign travel with the White House Fellows. Since then, I have also had dental and regular eye examinations.

14. **Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.**

Appointed, Special Assistant to the Secretary (White House Fellow), U. S. Department of Housing and Urban Development, 1982-83.

Appointed, Deputy Assistant Attorney General, Office of Legal Counsel, U. S. Department of Justice, 1986-87.

Appointed, Acting Assistant Attorney General, Office of Legal Counsel, U.S. Department of Justice, 1988-present.

I have neither held nor sought elective office.

15. **Legal Career:**

a. Describe chronologically your law practice and experience after graduation from law school including:

b. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

c. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

a. The legal employers I have been associated with since graduation (law firms, universities, and government agencies) and the dates and the nature of my affiliation with each are indicated in response to question 6 above.

b. 1976 - 78: My law practice during this period was as an associate attorney with a relatively large Chicago law firm, with a thriving civil practice. While I did a variety of work during this period, I specifically requested general corporate and real property work. Much of this consisted of internal or client memoranda, the drafting, review and negotiation of documents and contracts, as well as appearances before government agencies and administrative bodies. I was particularly involved with loan participation agreements, the public and private financing of a major new hospital, land use and other regulatory approvals for child care centers and other nonprofit organizations, including medical societies. I specifically requested some litigation exposure, and I successfully handled a moderate to small commercial litigation, at which our client prevailed at trial in the County Circuit Court.

1978 - 86: My legal work during this period was largely as a full-time, professor of law. Unlike some, I have never felt it appropriate to divert portions of my writing and teaching time to an outside consulting practice. Therefore, during this period, I have concentrated on developing new courses, working with students, and writing legal books and articles. The courses I have prepared and taught include: Property; Constitutional Law; Environmental Law; State & Local Government Law; Land Transfer & Finance; Land Use and various seminars related to law and morality or jurisprudence. Beyond this, I have volunteered my legal expertise to efforts at providing housing assistance to low income families in South Bend; assisting students with various legal problems without fee or providing counsel on local government or community issues. For example, in 1985 I helped organize a Fair Housing conference bringing together at Notre Dame those individuals who help resolve fair housing complaints in Northern Indiana. I have also given presentations to continuing legal education forums and municipal officers.

In addition during this period, I was appointed by Father Hesburgh, the former president of the University of Notre Dame, to direct the university's Center on Law & Government. In that capacity, I founded the quarterly Journal of Law, Ethics & Public Policy to consider various legal issues from the standpoint of ethical, religious and other normative values; helped expand the financial aid available to the second and third year law students participating in the work of the research center; supervised and on occasion edited research work submitted to the Center; and sponsored an extensive lecture series bringing scholars, theologians, and public figures to the law school and the university.

1982-83: During this period, I served as Special Assistant to HUD Secretary Samuel Pierce. Like most special assistants, my role was something of a troubleshooter, advising the Secretary of possible problems in the administration of HUD programs and suggesting alternatives for avoiding or ameliorating those difficulties. I spent considerable time, in conjunction with the White House and Treasury, developing and drafting legislation pertaining to the President's enterprise zone initiative. In addition, I helped coordinate and structure HUD's study of regulatory impediments to the delivery of affordable housing. Finally, I provided legal support and analysis for the Secretary's various proposals to increase the penalties for fair housing violations.

1986-87; 1988 - present: In this period, I served first as Deputy Assistant Attorney General and presently as Acting Assistant Attorney General in the Office of Legal Counsel of the Department of Justice. My principal responsibility is to assist in the rendering of legal advice on complex questions of constitutional law and statutory interpretation. In this capacity, I have drafted and supervised the preparation of legal opinions settling disputes among executive branch agencies, advising the Congress of constitutional or legal objections to pending legislation, and providing formal and informal legal advice to the White House Counsel, general counsels of executive agencies and divisions within the Department of Justice, itself.

c. I did not appear in court frequently during my years in practice prior to entering academic life, given the corporate and counseling nature of that practice. Nevertheless, I was given substantial autonomy in the litigation-related matters I was asked to handle from discovery through preliminary motions to trial. I appeared more frequently before city and county land use bodies or in probate proceedings. In the case referenced above which I took to judgment, I was sole counsel for the firm.

My government experience also has not principally involved litigation; however, I have participated in a number of U.S. Supreme Court cases, by drafting briefs and advising the Solicitor General on possible legal arguments to be presented before the Court. In addition, outside of my direct responsibilities in the Office of Legal Counsel, which is a non-litigating division of the Department, I have requested assignments in appellate litigation. This litigation is indicated below in question number 16.

16. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case.

(a) the date of representation;
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and
(c) The individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

a. Corporation of the Presiding Bishop of the Church of Jesus Christ of the Latter-Day Saints v. Donald P. Hodel, Secretary of Interior, 830 F.2d 374 (D.C. Cir.1987), cert. den., 108 S.Ct. 1752 (1988). The case was an appeal by the Church of a district court opinion dismissing its appeal of a decision of the High Court of American Samoa. The Church raised complex due process and "taking" arguments as well as a general challenge to the constitutionality of the Congressional scheme providing for the supervision of the Samoan territorial courts.

On behalf of the Secretary, I argued the case before Judges Silberman, Buckley and D.H.Ginsburg. The Church was represented at the oral argument by former Solicitor General Rex Lee. The court unanimously decided in favor of the Secretary. The Church raised the novel, and unsettled, question of whether a judicial decision could constitute a taking of property without the payment of just compensation. I successfully argued that the court did not have to reach this difficult question by undermining the Church's contention that an erroneous statute of limitations had been applied by the lower court or that the lower Samoan court's determination was barred by a previous decision alleged to be res judicata. In addition, the argument countered the Church's claim that it had been denied its property on the basis of an impermissible reliance upon a racial classification in violation of the equal protection clause. In particular, the court accepted my argument that -- based upon respect for the Samoan culture and the communal status of the property in issue -- the lower Samoan court had properly concluded that no one, regardless of race, could ever adversely possess such property. Finally, the court rejected the Church's claim that territorial courts established pursuant to Congress' plenary authority under Article IV violated either due process because they lacked the characteristics of Article III courts or equal protection because they were not akin to the courts provided in other territories.

With me preparing the brief were two lawyers from the Office of Legal Counsel, Susan Fine -- now with the Senate Legal Counsel and Lee Bentley -- presently on detail as assistant U.S. attorney for the southern district of Florida. I argued the case on April 10, 1987 and the court rendered its decision on October 9, 1987. The Supreme Court denied certiorari in May 1988.

b. First English Evangelical Lutheran Church v. County of Los Angeles, 107 S.Ct. 2378 (1987). In this case, I helped prepare the amicus brief of the United States together with the Solicitor General's office and lawyers from the Lands Division. The case presented the question of whether the Fifth Amendment taking clause is self-executing. In other words, if a regulatory taking is found to exist, does the Constitution require that compensation be paid for any period of time in which the regulation was in effect. We argued that regulatory takings do require the payment of compensation, but that the landowner should rely upon his Congressionally-provided remedies in 42 U.S.C. 1983. The Court held that should a taking be found, an issue they did not decide, a compensatory remedy is available directly under the Constitution by the express terms of the Fifth Amendment.

c. Nollan v. California Coastal Commission, 107 S.Ct. 3141 (1987). This case presented another taking issue. In particular, the Coastal Commission required as a condition of obtaining a building permit that a landowner dedicate a public beach easement. Again, I worked with the Solicitor General and the Lands Division to prepare the amicus brief for the United States. We argued that the California Court of Appeal had improperly applied the taking analysis enunciated by the Supreme Court in prior cases. Specifically, the lower court did not fully analyze the character of the government's action to determine if the "harm" caused by this landowner justified the requirement, and even if it did, what was the requirement's economic impact or interference with reasonable investment-backed expectations. The Court agreed that the lower court had failed to properly analyze the question and it invalidated the condition on the basis that it did not substantially advance the legitimate government interests articulated by the Coastal Commission.

d. Washington Properties v. Department of Housing & Urban Development. I am currently scheduled to brief and argue this case in the U.S. Court of Appeals for the 8th Circuit in September 1988. The case is an appeal from a district court decision denying a developer standing under the Administrative Procedure Act to challenge HUDs decision pertaining to the sale of a multi-family housing complex.

17. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

In all candor, my most significant legal activity has been the teaching of law to now hundreds of students at three universities. The teaching of any subject matter is surely a fiduciary obligation; the teaching of law students is an even greater trust responsibility. The bright, talented men and women in my classrooms have, by and large, come with open, challenging minds. As the foundation for their professional careers is laid, it is vitally important that their teachers introduce them to the great diversity of legal views and approaches in a fair, evenhanded manner. Yet, the law and law school can be an overwhelming and demanding experience -- one that tests the security of prior expectations and assumptions. In that competitive environment, it is crucial that teachers mold professionals without diminishing the personalty and human compassion students bring with them to law school and that a lawyer will need to understand and help resolve the problems of his or her clients. My friend Father Hesburgh used to urge upon us as law faculty members at Notre Dame the goal of producing lawyers who are both "competent and compassionate." "The absence of either quality," he would say, "defeats the other." In my judgment, Father Ted was surely right, and so if I was to identify one thing of significance in my legal career, I would be satisfied if my example encouraged even one student to become not only a capable lawyer, but also an understanding counselor, a patient and loving parent, and an involved member of his or her community.

Beyond this, I would be remiss if I did not characterize as "significant," the nature of my work in the Office of Legal Counsel. The responsibility of giving thorough, accurate, and objective legal advice on matters of great significance to the success or failure of national objectives is difficult to match with any professional context. It means not only getting difficult statutory and constitutional questions right, but also resisting the temptation ever-present in a linguistic endeavor to have the law suit one's own purposes. It frequently means having the fortitude to say "no," even when that may greatly disappoint or frustrate an otherwise meritorious policy. It surely means a careful, step-by-step review of the most subtle legal issues in an atmosphere of political competition, time pressure and intense scrutiny. While no single concept is capable of summarizing OLC's work, if I had to choose one, it would be the separation of powers. I have stated my views on this subject in an essay for the Catholic University Law Review [cited in number 12 above], but succinctly, my view is simply that constitutional power was separated by the framers to preserve liberty, but not to defeat the workability of the government as a whole. Thus, in my judgment, members of each branch have an obligation to avoid actions calculated to encroach upon the authority of the other, and where functions inevitably overlap, to work toward a harmony of constitutional purpose.

II. Financial Data and Conflict of Interest (Public)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

Pursuant to the established leave policy of the University of Notre Dame, the University has granted me a one-year leave of absence and continues during my absence regular faculty benefits, principally health and retirement programs.

In addition, the Clark Boardman Company of New York twice each year sends me a book royalty payment in connection with my land use law treatise published by them. The amount naturally varies depending on sales, but in the past it has ranged from $5,000 to $12,000 per year. While the book is annually supplemented, I fully anticipate that the bulk of sales are past, and therefore, I would anticipate future royalties to be considerably lower.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I would recuse myself from any matter pertaining to the University of Notre Dame. Depending upon the actual amount of future royalties, I would either recuse myself with respect to matters involving the Clark Boardman Company or seek a waiver, provided the amount proved to be de minimis and the designated ethics official of the Department thought a waiver would be appropriate. I would not anticipate either affiliation to be a substantial impediment to the work of the Department of Justice.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.

I have no plan, commitment or agreement to pursue outside employment during my service with the Department of Justice. As a tenured member of the law faculty, I am presently eligible to return to the University of Notre Dame.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

Please see Standard Form 278, attached.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

The net worth statement is also attached as requested.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Indiana Chairman, Scholars for Reagan-Bush '84. My principal responsibilities were to identify issues of importance to members of the higher education community and prepare position papers responsive to those issues. Before returning to government service this spring, I played a similar role with respect to education, housing and criminal justice policy for the Bush' 88 campaign.

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			
Cash on hand and in banks	49	027	—
U.S. Government securities—add schedule		75	—
Listed securities—~~add schedule~~ Oak Common		21	—
Unlisted securities—add schedule		—	—
Accounts and notes receivable:			
Due from relatives and friends		—	—
Due from others		—	—
Doubtful		—	—
Real estate owned—add schedule	295	000	—
Real estate mortgages receivable	–	—	–
Autos and other personal property	40	600	—
Cash value—life insurance	—	—	—
Other assets—itemize:			
IRA	28	241	—
Univ. Pension A/C	91	258	–
Keogh	22	362	–
Public Real Est. Ltd. Partnership	12	000	—
Total assets	538	584	—

LIABILITIES			
Notes payable to banks—secured			
Notes payable to banks—unsecured	—	—	—
Notes payable to relatives		—	—
Notes payable to others		—	—
Accounts and bills due		—	—
Unpaid income tax		—	—
Other unpaid tax and interest		—	—
Real estate mortgages payable—add schedule	191	000	—
Chattel mortgages and other liens payable		—	—
Other debts—itemize:			
		—	—
Total liabilities	191	000	—
Net worth	347	584	—
Total liabilities and net worth	538	584	

CONTINGENT LIABILITIES			
As endorser, comaker or guarantor	—	—	–
On leases or contracts	1	000	—
Legal Claims		—	–
Provision for Federal Income Tax		—	–
Other special debt		—	–

GENERAL INFORMATION			
Are any assets pledged? (Add schedule.)			no
Are you defendant in any suits or legal actions?			no
Have you ever taken bankruptcy?			no

Schedules for Financial Statement

Assets

1. Government Securities: 2 U.S. Savings Bonds, present value $75.00

2. Real Estate: 52177 Fieldstone Lane, Granger, Indiana, present value: $120,000
2622 Woodley Place, Falls Church, Virginia, present value: $175,000

Liabilities

1. Real Estate Mortgages: First Source Bank, South Bend, IN: $55,000

Col. Robert W. Koernig, Roaring Branch, PA: $136,000

III. General (Public)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

During my career, I have tried to be responsive to the obligation of ABA Canon 2 in a number of ways. As a young lawyer starting out in practice in Chicago, I assisted my brother Warren W. Kmiec in obtaining a grant from the Campaign for Human Development in order to establish a non-profit day labor program in an economically depressed neighborhood in Chicago. While there were a number of for-profit labor organizations in this area, it was Warren's belief, and my own, that far too little of the average daily wage was being returned to the worker and little or no effort was made to train workers for permanent jobs. With the grant in hand, I prepared the corporate and tax documents for the new non-profit entity and rendered legal advice to the organization over a period of years.

In South Bend, Indiana, I have served as a member of the board of directors of the Housing Allowance Office. This program was initiated in the early 1980s as part of a nationwide experiment to determine the efficiency and equity of using housing vouchers, rather than landlord or construction subsidies, to upgrade housing opportunities for low and moderate income families. The program assisted several thousand families and proved to be a model for later housing voucher programs. In 1983, voucher funding became unavailable, and I assisted the Office in making a difficult transition in cooperation with the public housing authority toward the administration of a more conventional Section 8 program. My service in government has necessitated my withdrawal from the board, but I would welcome an opportunity to serve again when I return to my home community.

While director of Notre Dame's Center on Law & Government, I worked to expand the financial aid available to students. I was successful in attracting a donor, to virtually double the financial aid associated with student work in the Center, and before going on leave from the university, I had developed a proposal, which was circulating among potential donors, that would provide specialized financial aid for law students choosing low-paying public service jobs following graduation.

During the last year, I have devoted substantial time to providing extensive pro bono constitutional and legal advice to the American Planning Association in its attempt to understand

and apply new land use laws and interpretations to the layout and design of communities across the United States. Relatedly, I have written and spoken extensively on the need to break down exclusionary income and racial barriers implicit in housing and land use regulation. I have also served on the Indiana Advisory Committee on Civil Rights and as a host for local public affairs forums on local public television addressing education and welfare issues and services.

Beyond these matters, I have drafted law school policies designed to recruit and retain minority and disadvantaged students within the student body. My wife and I have served for a number of years as counselors available to students, especially married students and those considering marriage. Finally, I have provided periodic pro bono legal advice to our neighborhood community association concerning the preservation or maintenance of undeveloped, or "greenbelt," areas.

2. Do you currently belong, or have you belonged, to any organization which discriminates on the basis of race, sex, religion -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

I do not currently belong, nor to my knowledge have I ever belonged, nor would I ever consider belonging to any organization which discriminates on the basis of race, sex, or religion. Of course, the University of Notre Dame is a Catholic university, and while it has a special attraction for Catholic scholars, it has faculty and students of many faiths.

BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full Name (including any former names used.)

RESPONSE:

Thomas Marshall Boyd
"Tom", "Tommy"

2. Address: List current place of residence and office address(es).

RESPONSE:

212 Prince Street
Alexandria, Virginia 22314

Department of Justice
Office of Legislative Affairs
10th & Constitution Avenue, N.W.
Room 1603
Washington, D.C. 20530

3. Date and place of birth.

RESPONSE:

September 10, 1946
Yorktown, Virginia

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

RESPONSE:

Torri Carol Tyler
Housewife

5. Education: List all college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

RESPONSE:

University of Virginia Law School, Charlottesville, Virginia. 1968-1971, J.D. 1971.

The Virginia Military Institute (VMI), Lexington, Virginia. 1964-1968, B.A., 1968.

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

RESPONSE:

1988 - Present	**Acting Assistant Attorney General Office of Legislative Affairs (OLA) U.S. Department of Justice**
1986 - 1988	**Deputy Assistant Attorney General OLA U.S. Department of Justice**
1976 - 1986	**Associate Counsel Committee on the Judiciary U.S. House of Representatives**
1974 - 1976	**Attorney Advisor Civil Rights Division/OLA U.S. Department of Justice**
1973 - 1974	**Senior Law Clerk U.S. District Court Los Angeles, California**
1972 - 1973	**Special Agent, AFOSI U.S. Air Force Travis AFB, California**
1971	**Law Clerk U.S. Attorney's Office Washington, D.C.**

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

RESPONSE:

1972 - 1973 **United States Air Force**
1st Lieutenant
230625891
Honorable Discharge

8. Honors and Awards: List and scholarships, fellowships, honorary degrees, and honorary society memberships that you believe should be of interest to the Committee.

RESPONSE:

1974 Joined DOJ under Honors/Judicial Clerkship Program
1985 Delta Society National Media Award

9. Bar Associations: List all bar associations, legal or judicial-related committees.

RESPONSE:

California State Bar Association
Professional
1973 - present

District of Columbia Bar Association
Professional
1974 - present

10. Other Membership: List all organizations to which you belong that are active in lobbying before public bodies.

RESPONSE:

Other than bar associations, none to the best of my knowledge and recollection.

Please list all other organizations to which you belong.

RESPONSE:

Republican Party
Army Navy Club, Arlington, Virginia
Leland Country Club, Leland Michigan

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapse if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

RESPONSE:

1973 - Present	California State Supreme Court Federal District for Central District of California Ninth Circuit Court of Appeals
1974 - Present	United States Circuit Court for District of Columbia

12. Published Writings: list the titles, publishers, and dates of books, articles, reports, or other published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

RESPONSE:

"First Love Discovers My Daughter." The Wall Street Journal, October 15, 1987. See attached Tab A.

"Launching a Boyhood Dream." The Wall Street Journal, May 1987. See attached Tab B.

"Competing for the Technology Cup." The Wall Street Journal, February 1987. See attached Tab C.

"Fred, a Dog Gone but Not Forgotten." Wall Street Journal, December 18, 1984. See attached Tab D.

"The Legend of Gloucester County." The Washington Post, February, 1984. See attached Tab E.

"Death of a Hero, Death of a Friend, George Washington's last hours." Virginia Cavalcade, Winter, 1984. See attached Tab F.

Co-author, "The 1982 Amendments to the Voting Rights Act; A Legislative History." 40 Washington and Lee University Law Review, 1347 (Fall, 1983). See attached Tab G.

"Splendor in the Ruins." Country, February 1982. See attached Tab H.

"Federal Judges: To Whom Do They Answer?"., 51 American Bar Association Journal 324, March, 1975. See attached Tab I.

"Removing Federal Judges: An Alternative to Impeachment," Los Angeles County Bar Bulletin, September, 1974. See attached Tab J.

Panel discussion on Independent Counsel statute at Kennedy School, Harvard University, February 28, 1988, Transcript not available.

Speech on Thomas C. Walker Scholarship Program given at Gloucester High School, Gloucester, Virginia, October 11, 1987.

13. Health: What is the present state of your health? List the date of your last physical examination.

RESPONSE:

Excellent
February 3, 1988

14. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any successful candidacies for elected public office.

RESPONSE:

Acting Assistant Attorney General
Office of Legislative Affairs, (OLA)
Department of Justice

Deputy Assistant Attorney General
OLA
Department of Justice

15. Legal Career:

    a. Describe chronologically your law practice and experience after graduation from law school including:

        1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were clerk;

RESPONSE:

Honorable A. Andrew Hauk
United States District Judge
Central District of California
July, 1973 - July, 1974

        2. whether you practiced alone, and if so, the address and dates;

RESPONSE:

No private practice.

        3. the dates, names and addresses of law firms or offices, companies or government agencies with which you have been connected, and the nature of your connection with each;

RESPONSE:

1988 - Present	**Acting Assistant Attorney General** **Office of Legislative Affairs, (OLA)** **U.S. Department of Justice**
1986 - 1988	**Deputy Assistant Attorney General** **OLA** **U.S. Department of Justice**

1976 - 1986	Associate Counsel Committee on the Judiciary U.S. House of Representatives
1974 - 1976	Attorney Advisor Civil Rights Division/OLA U.S. Department of Justice
1973 - 1974	Senior Law Clerk U.S. District Court Los Angeles, California
1972 - 1973	Special Agent, AFOSI U.S. Air Force Travis AFB, California
1971	Law Clerk U.S. Attorney's Office Washington, D.C.

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

RESPONSE:

I joined the Department of Justice in 1974 as a trial attorney in the Civil Rights Division. Shortly thereafter, I joined the Department's Office of Legislative Affairs and have remained in the Legislative field ever since.

Legislative, 1974 - Present

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

RESPONSE:

My clients have been three United States Attorneys General and Republican Members of the House Judiciary Committee.

c. 1. Did you appear in court frequently, occasionally, or not at all? If frequently of your appearances in court varied, describe each such variance, giving dates.

RESPONSE:

With the exception of Magistrate appearances in Alexandria, Virginia, during the winter of 1987-1988, not at all as counsel of record.

2. What percentage of these appearances was in:
   (a) federal court
   (b) states courts of record;
   (c) other courts.

RESPONSE:

Not applicable.

3. What percentage of your litigation was:
   (a) civil;
   (b) criminal.

RESPONSE:

None.

4. State the number of cases in courts of record you tried to verdict or judgement (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

RESPONSE:

Not applicable.

5. What percentage of these trials was;
   (a) jury;
   (b) non-jury.

RESPONSE:

None.

16. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

    (a) the date of representation;
    (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
    (c) The individuals name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

RESPONSE:

Not applicable.

17. Legal Activities: Describe the most significant legal activities you have pursed, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

RESPONSE:

I have been involved, at the staff level, in the creation of the following major legislation:

1. Voting Rights Act Amendments of 1975
2. Bankruptcy Reform Act of 1978 (and 1984 amendments)
3. Voting Rights Act Amendments of 1982
4. Immigration Reform Act of 1986
5. Independent Counsel Act Amendments of 1987

I participated as an attorney at the Department of Justice and as Republican Counsel to the House Judiciary Committee. My responsibilities included drafting language, legal research, advocacy, and, in the House, periodic direct/cross examination of witnesses before Legislative Committees.

I. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

RESPONSE:

None.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining in the areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated

RESPONSE:

I expect to resolve conflicts of interest as I have in the past, by recusing myself from situations and circumstances which would create the appearance of a conflict between the Department's interests and those of the President, and my own.

The only potential conflicts I can imagine are those which might involve parties with whom I might have been closely associated before coming to the Department. To the extent that their interests and those of the Department/Administration diverge, or appear to do so, I will recuse myself. In such matters, I will rely heavily on the advice of career ethics officials at the Department.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.

RESPONSE:

I have no present plans to pursue outside employment, though I have made inquires to examine opportunities outside the government that might exist next year, after President Reagan's term has ended.

4. List sources and amounts of all income received during the calender year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Government Act of 1978, may be substituted here.)

RESPONSE:

Financial Statements Attached.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

RESPONSE:

See attached.

6. Have you ever had a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your titles and responsibilities.

RESPONSE:

I worked on Senator Howard Baker's campaign for President in 1980, without salary or title and on my own time. From time to time, I prepared issue summaries for review by the candidate's staff. During the transition following President Reagan's victory in 1980, I served as House Counsel on the candidate's law enforcement transition panel.

Similarly, I worked with Paul Trible's campaign for the United States Senate in 1982.

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

RESPONSE:

I have tried to live my life and raise my children in a household which appreciates the enormous benefits of a multiracial, multicultural society. I try to teach my children that ours is a pluralistic culture, and that wealth, privilege and social status do not determine the intrinsic worth of the individual. From time to time throughout my career, I have contributed financially to organizations which are devoted to serving the disadvantaged. Moreover, I played a prominent role in creating the Thomas C. Walker Scholarship Program in Gloucester County, Virginia, where I grew up. This program memorializes the contributions of the late Mr. Walker, the first black attorney in the county and, during his long life, one of the most outspoken advocates for civil rights in the Commonwealth, and it does so by establishing a scholarship for disadvantaged children in Gloucester County. I spoke at the dedication ceremonies on October 11, 1987. and I have contributed to the scholarship.

2. Do you currently belong, or have you belonged, to an organization which discriminates on the basis of race, sex, or religion -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

RESPONSE:

Not to the best of knowledge or recollection.

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS		
Cash on hand and in banks 1	94805	11
U.S. Government securities—add schedule		0
Listed securities—add schedule	16937	00
Unlisted securities—add schedule	4000	00
Accounts and notes receivable:		
Due from relatives and friends		0
Due from others		0
Doubtful		0
Real estate owned—add schedule	467280	00
Real estate mortgages receivable		0
Autos and other personal property	57196	00
Cash value—life insurance		0
Other assets—itemize:	298819	00
See schedule		
Total assets	939037	11

LIABILITIES		
Notes payable to banks—secured		0
Notes payable to banks—unsecured		0
Notes payable to relatives		0
Notes payable to others		0
Accounts and bills due		0
Unpaid income tax		0
Other unpaid tax and interest		0
Real estate mortgages payable—add schedule 2	55350	79
Chattel mortgages and other liens payable		0
Other debts—itemize:		
None		
Total liabilities	55350	79
Net worth	883686	62
Total liabilities and net worth	939037	41

CONTINGENT LIABILITIES		
As endorser, comaker or guarantor		0
On leases or contracts		0
Legal Claims		0
Provision for Federal Income Tax		0
Other special debt		0

GENERAL INFORMATION	
Are any assets pledged? (Add schedule.)	No
Are you defendant in any suits or legal actions?	No
Have you ever taken bankruptcy?	No

* based on current tax assessment

1. Includes $150.00 in bank account in daughters name as well as Certificates of Deposit held in children's educational account in custody of their maternal grandmother. Total as of July 19, 1988.

2. As of 1/1/88, martage balance on residence, 212 Prince Street.

SCHEDULES OF ASSETS

Listed Securities:

Morgan J.P. & Co. Inc	200 Shares	$7,775.00
Rohm & HAAS Co.	100 Shares	3,475.00
Thompson McKinnon Assets (owned by wife)	500 Shares	5,687.00
Total Listed Securities		$16,937.50

Unlisted Securities

Techniclone International (owned jointly)	1000 Shares	$4,000.00
Total Unlisted Securities		$4,000.00

Real Estate Owned

212 Prince Street (residence) Alexandria, Virginia - jointly owned with wife	$359,100.00
1/5 interest in father's residence and 38 acres, Gloucester, Virginia (other interest is owned by father and brother)	60,180.00
60 acres, undeveloped, Gloucester, Virginia	48,000.00
Total Real Estate Owned	$467,280.00

Other Assets

Coins: Gold & Silver Based on gold price of $450.02 and silver of $7.80.	$2,200.00
Spouse's interest in trust fund set up by deceased father for benefit of wife. (Interest contingent on mother's decision by will; remaining interest owned by her brother)	277,795.30
Civil Service Retirement Fund	18,823.38
Total Other Assets	$298,819.30

AFFIDAVIT

I, Thomas Marsahll Boyd, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

7/27/88
(DATE)

Thomas Marshall Boyd
(NAME)

Kimberly [illegible]
(NOTARY) District of Columbia
My Commission Expires May 31, 1993